

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIAM D. POSEY,

Petitioner,

v.

MATHEW FRANKS,
GARY R. McCAUGHTRY,

Respondents.

ORDER

04-C-634-C

In an order entered in this case on September 7, 2004, I assessed petitioner William D. Posey an initial partial payment of the fee for filing his complaint in the amount of \$20.14. I told petitioner that if he failed to pay the assessed amount by September 28, 2004, I would consider that he had withdrawn this action voluntarily and the clerk of court would close this file without prejudice to petitioner's filing his case at a later date. On September 8, 2004, petitioner wrote to the court, asking that a copy of his complaint be returned to him "for filing at a later date." Petitioner included with his letter a check in the amount of \$1.79, which he said was intended to cover the cost of mailing his complaint back to him. From this letter, I understood petitioner to be withdrawing his complaint voluntarily. Although a copy of petitioner's complaint subsequently was returned to

petitioner, so was petitioner's check for \$1.79. This is because it is not the court's practice to send out mail that is paid for by the litigants, which means also that this court does not have a designated account in which to deposit payments made for that purpose.

Now, the Wisconsin Resource Center has sent the court a check in the amount of \$20.14, which is designated as petitioner's initial partial payment of the \$150 filing fee in this case. However, it is unclear whether the check was cut before petitioner changed his mind about proceeding with this action, or whether petitioner has decided that he does indeed wish to prosecute this action at this time.

ORDER

IT IS ORDERED that petitioner may have until October 29, 2004, in which to advise the court, in writing, whether he wishes to proceed with this action at this time. If petitioner advises the court that he does wish to proceed, then the court will take his complaint under advisement to screen pursuant to 28 U.S.C. § 1915(e)(2)(B). However, if, by October 29,

2004, petitioner fails to respond to this order, then I will direct the clerk of court to refund the \$20.14 initial partial payment submitted on September 24, 2004, and close this file.

Entered this 13th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge