

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

GARY B. CAMPBELL,

Petitioner,

ORDER

v.

04-C-661-C

WOOD COUNTY SHERIFF DEPUTY
TODD JOHNSON and UNKNOWN
OFFICIALS,

Respondents.

Petitioner Gary B. Campbell, a prisoner at the Waushara County Jail in Wautoma, Wisconsin, has submitted a proposed complaint. He requests leave to proceed in forma pauperis. Petitioner does not support his request for pauper status with a certified copy of his trust fund account statement as required by 28 U.S.C. § 1915(a)(2), because as of August 31, 2004, he did not have such a statement with the Waushara County jail. Petitioner does not explain when he was first confined at the Waushara County jail or whether petitioner was incarcerated at another jail or prison immediately prior to his incarceration at the jail.

Because petitioner is a prisoner, he is subject to the 1996 Prison Litigation Reform

Act. Under the act, he cannot proceed in forma pauperis unless he first pays an initial partial payment of the \$150 fee for filing his complaint, 28 U.S.C. § 1915(a)(2), or the court finds that he does not have any assets or means by which to pay the initial partial payment, 28 U.S.C. § 1915(b)(4). In this case, it is not clear from petitioner's submissions whether he has the means to pay an initial partial payment.

28 U.S.C. § 1915(a)(2) states,

A prisoner seeking to bring a civil action . . . without prepayment of fees or security therefor, in addition to filing [an affidavit setting forth all assets the prisoner possesses], shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . , obtained from the appropriate official *of each prison at which the prisoner is or was confined*. (Emphasis added.)

If petitioner was confined at another institution immediately prior to his transfer to the Waushara County jail, then he will have to obtain a trust fund account statement from that institution. If he was not confined to any institution during the six-month period immediately preceding the filing of his complaint, then he must advise the court of that fact. In that instance, I will conclude from petitioner's affidavit of indigency that he presently has no assets and no means with which to pay an initial partial payment of the \$150 fee for filing his complaint. However, petitioner should be aware that even if the court concludes that he has no assets or means to pay an initial partial payment of the filing fee, he will be obligated to pay the \$150 filing fee when he does have the means to do so. His account will

be monitored and the fee must be taken in monthly installments when the funds exist. Also, petitioner should be aware that even if the court finds that he qualifies for indigent status under § 1915(b)(4), the court will have to screen his complaint before it can be served and dismiss any claim if the court determines that the claims is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief.

ORDER

IT IS ORDERED that petitioner may have until September 30, 2004, in which either to advise the court that he was not confined to any institution in the six-month period preceding his incarceration at the Waushara County jail or to submit a trust fund account statement from any such institution in which he was confined as required by 28 U.S.C. § 1915(a)(2). If, by September 30, 2004, petitioner does neither of these things, I will deny his request for leave to proceed in forma pauperis in this action for his failure to show that

he is entitled waiver of the initial partial payment under 28 U.S.C. § 1915(b)(4).

Entered this 9th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge