

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

---

DONALD BUFORD,

Petitioner,

v.

JIM SUTTEN, M. ZALENSKI,  
R. KRUGER, SANDRA HENSLER,  
JANEL NICHEL, MR. SPANBERG,  
TIM DOUMA, PHIL KINGSTON,  
PAT SIEDSCHLAG, SGT. MORRIS,  
DR. MIKE VANDERBROOK, DR.  
CURT SCHWEBSKI and DR. WALSH,

Respondents.

---

ORDER

04-C-959-C

In an order dated January 31, 2005, I assessed petitioner Donald Buford \$1.66 as an initial partial payment of the \$150 fee for filing this case. I asked him to submit a check or money order made payable to the clerk of court in that amount on or before February 21, 2005. Now petitioner has written to say that prison officials are refusing to send the court the initial partial payment because he does not have \$1.66 in his regular prison account. Petitioner states that he expects to have income credited to his regular account in the next few weeks and that he will pay the initial partial payment as soon as he has it. I construe petitioner's communication to include a request for an enlargement of time in which to pay

the initial partial payment he owes in this case.

Although petitioner's request will be granted, I note that in another case filed in this court, Collins v. Green, 97-C-669-C ( W.D. Wis. Sept. 26, 1997), I addressed the question whether release account funds should be considered for the purpose of calculating the initial partial payment owed by a prisoner subject to the Prisoner Litigation Reform Act. I looked to the language of 28 U.S.C. §§ 1915(a) and (b), the fee assessment and collection provisions of the federal statute, and concluded that Congress's reference in these provisions to a single "trust fund account" or "prisoner account" signaled no intent on the part of Congress that the district courts were to exclude from consideration sums in an inmate's release account. Subsequently, the state of Wisconsin took the position that, with respect to initial partial payments under the supremacy clause, the Prisoner Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, it has been the practice of the state Department of Corrections that if a petitioner does not have sufficient funds in his regular account to pay the full amount of the initial partial payment assessed to him, then prison officials will draw funds first from the prisoner's regular account and any portion of the initial partial payment remaining from the prisoner's release account fund.

Petitioner's trust fund account statement shows that he has more than \$1.66 in his release account. Nevertheless, he says that the prison's financial officer is refusing to pay his initial partial payment from that account. Petitioner does not submit a copy of the financial

officer's written refusal to take money from his release account to pay his initial partial payment in this case. Such documentation ordinarily is required before a finding can be made that petitioner lacks the means to pay the amount he owes as an initial partial payment. In any event, I will grant plaintiff an enlargement of time to March 22, 2005, in which to pay the assessed amount. If, by March 22, 2005, petitioner still cannot comply with this court's order to pay an initial partial payment, he will have to advise the court of that fact and submit documentation showing that the prison's financial office is refusing to pay the assessment from his release account.

#### ORDER

IT IS ORDERED that petitioner may have an enlargement of time to March 22, 2005, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.66. If, by March 22, 2005, plaintiff fails to pay the initial partial payment or explain his failure to do so with necessary documentation, he will be held to have withdrawn

this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 28th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge