

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

HARRISON FRANKLIN, on behalf
of himself and all those similarly situated,

Petitioners,

v.

GERALD BERGE, PETER HUIBREGTSE,
BURTON COX, JR., NURSE VICKY,
C/O MATHEW SCULLION, BRIAN KOOL,
M. HARPER, TIM HAINES, SHARON
ZUNKER, DR. DAVID BURNETT, JAMES
GREER, ANTHONY BROADBENT,
JOHN DOE/JANE DOE 1-100,

Respondents.

MEMORANDUM

05-C-251-C

On April 25, 2005, I denied petitioner's request for leave to proceed in forma pauperis in this action without prejudice to his refiling his case after he has paid the amounts of his arrears in case no. 02-C-618-C. Judgment of dismissal was entered on April 26, 2005. On May 4, 2005, petitioner filed a timely motion pursuant to Fed. R. Civ. P. 59 for relief from the judgment of dismissal. I denied that motion on May 19, 2005. Now petitioner has written a letter asking what step he should take next.

Petitioner has two options: pay up his past debt and move to reopen this case or file

a notice of appeal from the April 26 judgment. (A petitioner has 30 days from the date his timely-filed Rule 59 motion is denied in which to file a notice of appeal from the judgment of dismissal.) If petitioner chooses to file a notice of appeal, he should be aware that if he asks for leave to proceed on appeal in forma pauperis, I will deny his request for the same reason I have denied his request for leave to proceed in forma pauperis in this court. In that circumstance, petitioner may delay payment of the \$255 fee for filing an appeal under one circumstance; that is, if, within thirty days of the date he receives the order denying his request for leave to appeal in forma pauperis, he asks the court of appeals to decide whether it was error for this court to deny his request for leave to proceed in forma pauperis for the reason that it did. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to bar petitioner from taking advantage of the in forma pauperis statute because of his failure to pay the amounts he owed on filing fees in his previous lawsuit, then the matter will be remanded to this court for a determination whether petitioner's appeal is taken in good faith. If the court of appeals determines that the district court was correct in finding that petitioner's arrears status bars him from taking his appeal in forma pauperis, the \$255 filing fee payment will be due in full immediately. Whatever the scenario, petitioner

will be responsible for insuring that the required sum is remitted to the court at the appropriate time.

Entered this 26th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge