

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

WALTER R. LANNET, SR.,

Petitioner,

v.

WISCONSIN D.O.C.-S.O.R.P,
MATTHEW FRANK, Secretary and or agent;

Respondents.

ORDER

05-C-318-C

Petitioner Walter R. Lannet, Sr., a prisoner at the Marquette Correctional Institution in Marquette, Michigan, has filed a proposed complaint for money damages and a request for leave to proceed in forma pauperis. The request will be denied, because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, I denied petitioner leave to proceed in forma pauperis in lawsuits that were legally frivolous. See Lannet v. Smith, 94-C-325-C, decided May 3, 1994; Lannet v. Smith, 94-C-913-C, decided Dec. 19, 1994; and Lannet v. Rickaby, 94-C-882, decided Dec. 21, 1994. Moreover, petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury.

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If he chooses to pay the filing fee, he must submit a check or money order made payable to the clerk of court in the amount of \$250 no later than June 24, 2005. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not pay the \$250 filing fee by June 24, 2005, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$250 filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). From petitioner's trust fund account statement, it is clear that he does not presently have the means to pay the fee from his prison account. Therefore, unless he

is successful in obtaining the money from some other source, I will be required to advise the warden of the Marquette Correctional Institution of petitioner's obligation to pay the fee so that if and when funds do exist in petitioner's account, the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until June 24, 2005, in which to submit a check or money order made payable to the clerk of court in the amount of \$250. If, by June 24, 2005, petitioner fails to pay the fee, the clerk of court is directed to close this file.

Entered this 3rd day of June, 2005.

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