

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

DUNCAN J. McNEIL, III,

Petitioner,

v.

UNITED STATES AND ITS
OFFICERS AND AGENCIES;
CLERK, U.S. DISTRICT COURT,
W.D. WI; CLERK, U.S. BANKRUPTCY
COURT, W.D. WI; U.S. ATTORNEY,
W.D. WI; OFFICE OF U.S. TRUSTEE,
W.D. WI; U.S. MARSHAL SERVICE,
W.D. WI; FBI, W.D. WI; IRS, W.D. WI;
SECRET SERVICE, W.D. WI; and their
officers,

Respondents.

ORDER

05-C-400-C

Petitioner Duncan J. McNeil, III, a prisoner at the Spokane County Jail in Spokane, Washington, 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, petitioner has filed complaints that have been dismissed because they were frivolous, malicious or failed to state a claim upon which relief may be granted. See McNeil v. Whaley, CV-04-371-AAM, decided Nov. 9, 2004 (E.D. Wa.); McNeil v. Gregoire, CV-04-372-AAM, decided Nov. 9, 2004 (E.D. Wa.); and McNeil v. Miller, CV-04-378-AAM, decided Nov. 9, 2004 (E.D. Wa.). Petitioner's complaint does not allege any credible facts from which an inference may be drawn that he is under imminent danger of serious physical injury. Accordingly, petitioner's complaint is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$250 and he must do so no later than August 2, 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 \$150 filing fee by August 2, 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). I will advise the warden of the Spokane County Jail of petitioner's obligation to pay the fee so that when funds 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

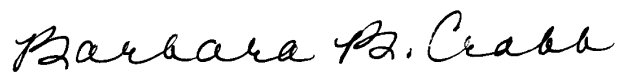
IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until August 2, 2005, in which to submit a check or money order made payable to the clerk of court in the amount of \$250. If, by August 2, 2005, petitioner fails to pay the fee, the clerk of court is directed to close

this file and notify the warden of the Spokane County Jail of petitioner's obligation to pay the fee.

Entered this 11th day of July, 2005.

BY THE COURT:

A handwritten signature in cursive script that reads "Barbara B. Crabb".

BARBARA B. CRABB
District Judge