

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

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LARRY GEORGE,

Plaintiff,

v.

ORDER

05-C-403-C

JUDY SMITH, MATTHEW FRANK, RUTH TRITT, JOHN RAY, MARTY SCHROEDER, CINDY O'DONNELL, OFFICER VILSKI, TIM PIERCE, RICK RAEMISCH, JENNIFER DELVAUX, SANDRA HAUTAMAKI, LT. BLODGETT, TOM EDWARDS, PATRICIA VOERMANS, MICHELLE ALBRECHT, MICHAEL BOUSHON, NURSE CARIVOU, SHARON ZUNKER, JUDY JAEGER, STEVEN CASPERSON, JIM SCHWOCHERT, SANDY HABECK, LENARD WELLS, STEVEN LANDREMAN,

Defendants.

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In an order dated February 15, 2007, I directed plaintiff Larry George to submit a certified copy of his trust fund account statement so that a determination may be made whether he is indigent for the purpose of proceeding on appeal in forma pauperis and if he is, what amount must be assessed under the 1996 Prison Litigation Reform Act as an initial partial payment of the fee for filing his appeal. In the same order, I found that plaintiff's appeal is not taken in bad faith and that he is not barred by the three strikes provision of 28

U.S.C. § 1915(g) from proceeding with his appeal in forma pauperis. The latter finding was erroneous. Plaintiff has struck out. (He appears to have known that at the time he filed this action and paid the full filing fee.) He has earned strikes in at least three cases: George v. Sullivan, 95-C-355-C, (decided July 21, 1995); George v. Buchler, 94-C-315-C (decided April 29, 1994); and George v. Dept. of Corrections, 93-C-609-C (decided October 29, 1993). Therefore, he cannot proceed in forma pauperis on appeal and must pay the \$455 fee in full immediately. (Plaintiff cannot show that he qualifies for the imminent danger exception to § 1915(g) because this lawsuit concerns alleged First Amendment violations relating to the denial of publications only.) Plaintiff may delay payment of the fee under one circumstance, that is, if he challenges in the court of appeals within thirty days of the date he receives this order the decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that plaintiff does not have three strikes, the matter will be remanded to this court for assessment of an initial partial payment. However, if the court of appeals determines that the district court was correct finding that § 1915(g) bars plaintiff from taking his appeal in forma pauperis, the \$455 filing fee payment will be due in full immediately. Whatever the scenario, plaintiff is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that the order entered in this case on February 15, 2007, is RESCINDED.

Further, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against plaintiff under 28 U.S.C. § 1915(g). Further, IT IS ORDERED that the clerk of court insure that plaintiff's obligation to pay the \$455 is reflected in this court's financial records.

Entered this 22d day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge