

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

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ANDREW BIGBEE,

Petitioner,

ORDER

v.

05-C-66-C

UNITED STATES OF AMERICA,  
FEDERAL BUREAU OF PRISONS,  
LIEUTENANT JOHNSON, officially  
and individually (Correctional Officer),

Respondents.  
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Petitioner Andrew Bigbee, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. However, from the trust fund account statement that petitioner has submitted, I conclude that he does not qualify for pauper status.

Petitioner is subject to the 1996 Prison Litigation Reform Act. Under the act, the court must assess every prisoner an initial partial payment of the fee for filing his lawsuit before screening the complaint pursuant to 28 U.S.C. § 1915(e)(2). The fee for filing this civil lawsuit is \$150. (This fee will be increased to \$250 for filings submitted after February 7, 2005.) A calculation of petitioner's initial partial payment using the method set by

Congress in 28 U.S.C. § 1915(b) results in a finding that 20% of plaintiff's average monthly deposits is \$151.76. This amount exceeds the amount necessary to pay the \$150 filing fee. Logically, if the 20% calculation reveals that a prisoner can afford to pay all of the fee for filing his complaint, then the prisoner does not qualify for indigent status under § 1915, and his request for leave to proceed in forma pauperis should be denied.

#### ORDER

Accordingly, IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis in this action is DENIED because petitioner does not qualify for indigent status.

Further, IT IS ORDERED that petitioner may have until February 24, 2005, in which to pay the \$150 fee for filing his complaint. If, by February 24, 2005, petitioner fails to pay the filing fee or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily.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.

Finally, IT IS ORDERED that if petitioner pays the \$150 filing fee within the time allowed, the court will take petitioner's complaint under advisement for screening in accordance with 28 U.S.C. § 1915A. Petitioner is not to serve his complaint on any of the proposed respondents unless he is authorized to do so in the screening order, which will be

issued as promptly as the court's calendar permits following petitioner's payment of the filing fee.

Entered this 3rd day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge