

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

TITUS HENDERSON,

Petitioner,

v.

ORDER

06-C-12-C

JOHN D. BRUSH; CORRECTIONS CORPORATION
OF AMERICA; ASSOCIATE WARDEN PICKERING;
MATTHEW FRANK; PETER HUIBREGTSE; BRIAN
KOOL; JUDITH HUIBREGTSE; TRACEY GERBER;
JOHN BOSTON; JOHN DOE; SGT. GRONDIN;
J. STARKY; RUSSELL BAUSCH; ROBERT SHANNON;
TODD OVERBO; ELLEN RAY; KELLY TRUMM;
CHRISTEN BEERKIRCHER; DICK VERHAGEN;
CO II HENNERMAN; CO II SCHISSEL; RICHARD
SCHNEITER; JOHN & JANE DOE CORRECTIONAL
OFFICERS; DR. COX; and AMY CAMPBELL,

Respondents.

Petitioner Titus Henderson, a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. Because petitioner is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint in forma pauperis, petitioner will have to make an initial partial payment of the filing fee in the amount of \$1.78 and the remainder of the fee in monthly

installments even if his request for leave to proceed is denied. I note from petitioner's trust fund account statement that 100% of his income is being surrendered to pay for filing fees in other cases. Nevertheless, I cannot infer from this fact that petitioner does not have the means to pay an initial partial payment in this case. Nothing in 28 U.S.C. § 1915 allows courts to make an exception to the initial partial payment provision in situations where 100% of a prisoner's income is being taken to pay installments on earlier debts the prisoner incurred under the 1996 Prison Litigation Reform Act. The Court of Appeals for the Seventh Circuit has ruled that only if a prisoner lacks "means" to pay the initial partial payment may a district court allow him to proceed without paying the initial partial payment, and "means" as defined by the court of appeals equates to income. Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000) (prisoner with periodic income has "means" even when he lacks "assets"). Because petitioner has income, he must pay an initial payment in this case before he may proceed further.

ORDER

IT IS ORDERED that petitioner is assessed \$1.78 as an initial partial payment of the \$250 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$1.78 on or before February 3, 2006. If, by February 3, 2006, petitioner fails to make the initial partial payment 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.

Entered this 13th day of January, 2006.

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