

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

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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.

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In an order entered on January 13, 2006, I gave plaintiff until February 3, 2006, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.78 to pay the initial partial payment required by 28 U.S.C. § 1915(b)(1) for filing his complaint. I told plaintiff that if, by February 3, 2006, he failed to make the initial partial payment or explain his failure to do so, he would be held to have withdrawn this action voluntarily and that in that event, the clerk of court would be directed to close this file

without prejudice to petitioner's filing his case at a later date.

On January 26, 2006, plaintiff wrote the clerk of court to ask for a copy of his complaint. Although the court responded to that letter, it failed to note that plaintiff had attached to his letter a note showing that when he asked the prison financial office to remit the \$1.78 payment to this court, a financial officer in the business office refused to issue a check, responding instead that “you do not have any available funds to submit \$1.78 to the courts as a partial filing fee. You will need to contact the court and inform them of the situation.” A second review of petitioner’s trust fund account statement shows that although petitioner is receiving a regular modest income, 100% of that income is presently being collected in installments to pay fees he owes state and federal courts for previously filed complaints and, possibly, to repay legal loans.

The court of appeals has not determined the priority to be given to a prisoner’s obligations under the Prison Litigation Reform Act under the circumstances present in this case. However, in 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), the Court of Appeals for the Seventh Circuit noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. In Newlin, the court ruled that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply

because the money was spent as quickly as it was earned. In the view of the court, collection of the assessment “should have come off the top of the next deposit of prison wages . . . .” Nothing in § 1915(b)(2), the installment collection provision of the statute, contradicts this method of determining priority of payments. Indeed, § 1915(b)(2) states, “*After payment of the initial partial filing fee*, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income . . . (emphasis added).” Nothing in the statute authorizes prison officials to refuse to make an initial partial payment when the prisoner owes installment payments on several other cases or appeals. Therefore, it appears that the prison financial officer was not on firm ground when he or she denied plaintiff’s request for payment of the initial partial payment ordered in this case on January 13.

Accordingly, IT IS ORDERED that the deadline within which plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$1.78 is extended to February 28, 2006. In order to insure payment of the assessed amount, I am sending a copy of this order to plaintiff’s warden and requesting that he take whatever steps are necessary to see that the initial partial payment ordered in this case is paid from the next deposit made to plaintiff’s account. If, by February 28, 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 9th day of February, 2006.

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