

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

ORLANDO LARRY,

Petitioner,

ORDER

v.

06-C-197-C

CHAPLAIN DELL GOETZ;
and DANE COUNTY JAIL,

Respondents.

ORLANDO LARRY,

Petitioner,

ORDER

v.

06-C-223-C

DEPARTMENT OF CORRECTIONS
and JOANNE ANDERSON,

Respondents.

On April 20, 2006, I entered an order in case no. 06-C-197-C, directing petitioner Orlando Larry to submit no later than May 11, 2006, a \$13.60 initial partial payment of the \$350 fee for filing his complaint in that case. I told petitioner that if he failed to pay the assessed amount by May 11, he would be held to have withdrawn the action voluntarily and

his case would be closed. Now petitioner has filed a second lawsuit, which was assigned case no. 06-C-223-C. In that case, petitioner did not pay the filing fee or submit a trust fund account statement and request leave to proceed in forma pauperis. Therefore, I looked to the request for indigent status he made in connection with case no. 06-C-197-C to determine his indigent status in case no. 06-C-223-C. In reviewing the file in case no. 06-C-197-C, however, it has come to my attention that at the time petitioner filed his first lawsuit, he may not have been incarcerated at the Dane County jail as I had supposed. The last transaction shown on his trust fund account statement was on February 28, 2006. In addition, although petitioner complains about matters occurring at the Dane County jail in both of his lawsuits, he shows a return address in both cases of 834 W. Badger Rd., #2, in Madison, Wisconsin. Because it appears that petitioner was not a prisoner when he filed case no. 06-C-197-C, that case is not subject to the 1996 Prison Litigation Reform Act. This means that if petitioner is found to be indigent according to the standard applied to unincarcerated persons, he is not required to pay an initial partial payment of the filing fee. Therefore, I am rescinding the order entered on April 20, 2006 in case no. 06-C-197-C.

The standard for determining whether a non-prisoner is financially eligible for pauper status in this court is as follows. First, the court determines the petitioner's annual gross income. It then subtracts \$2820 for each dependent, excluding the petitioner. If the balance is less than \$11,500, the petitioner may proceed without any prepayment of the filing fee. If the balance is greater than \$11,500 but less than \$15,000, the petitioner must

prepay half of the filing fee. If the balance is greater than \$15,000, the petitioner must prepay all of the filing fee.

In these cases, the court cannot determine whether petitioner qualifies for indigent status because he has not submitted an affidavit of indigency. His trust fund account statement is not helpful in determining his gross annual income over the past year, whether he has any dependents, and what his assets may be. Therefore, I am enclosing to petitioner with this order two blank forms for an affidavit of indigency. He is to complete both forms and return them to the court for filing in each of his cases.

Once petitioner returns the completed affidavits of indigency, this court will decide whether petitioner qualifies for indigent status. This determination will go beyond reviewing petitioner's financial status. Pursuant to 28 U.S.C. § 1915(e)(2), the in forma pauperis statute, the court also must consider whether the claims raised in petitioner's complaints are legally meritless or seek money damages from a defendant who is immune from such relief. If the complaint does not pass this inspection, it must be dismissed.

ORDER

IT IS ORDERED that the order entered in case no. 06-C-197-C on April 20, 2006, is RESCINDED.

Further, IT IS ORDERED that petitioner may have until May 9, 2006, in which to complete the enclosed forms for an affidavit of indigency and return them to the court. If,

by May 9, 2006, petitioner fails to support his request for leave to proceed without prepayment of the \$350 fee for filing each of his cases with the necessary affidavits of indigency, then I will deny his request and dismiss his cases without prejudice to his refiling them at some later time.

Entered this 25th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge