

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

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ORLANDO LARRY,

Plaintiff,

v.

DELL GOETZ,

Defendant.

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ORDER

06-C-197-C

In an order dated April 19, 2007, I directed plaintiff Orlando Larry to submit, no later than May 10, 2007, a check or money order made payable to the clerk of court in the amount of \$83.11 as an initial partial payment of the \$455 fee for filing his appeal. I told plaintiff that if, by May 10, 2007, he failed to make the initial partial payment or explain his failure to do so, then I would advise the court of appeals of his noncompliance in paying the assessment so that it could take whatever steps it deemed appropriate with respect to his appeal. Now plaintiff has submitted a communication dated May 9, 2007, in which he declares under penalty of perjury that the Dane County jail bookkeeper is “distributing funds from our account based on how much they think we should have and not what we request.” He contends that “for nearly 2 months now, the book keeper has been refusing to send me

the amount that I requested including the filing fee that you ordered me to pay.”

Because plaintiff has not submitted a copy of the request he made to the jail’s financial officer or a copy of the officer’s response to plaintiff’s request, it is not possible to conclude that the book keeper is wrongly withholding disbursement of the initial partial payment ordered to be paid in this case. Therefore, I will construe plaintiff’s submission to be a motion for an enlargement of time within which to pay the initial partial payment and I will grant the motion.

For the record, I note that plaintiff is not entitled to receive directly the money he needs to pay the \$83.11 initial partial payment he has been assessed. Ordinarily, prison or jail officials request that the inmate prepare a stamped envelope addressed to the court so that the check may be mailed directly to the court. It is not at all clear from plaintiff’s motion that he complied with the jail’s procedures for obtaining release of the requested funds to this court. I note also, however, that sometimes, jail or prison officials do not understand that initial partial payments required to be paid in federal court actions under the Prison Litigation Reform Act and 28 U.S.C. § 1915 are to be paid “off the top of the next deposit of prison wages . . . .” 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). 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. Id. Nothing in the statute authorizes prison officials to refuse to make an initial partial payment because a prisoner owes payments on other obligations.

Accordingly, I will grant plaintiff one last extension of time in which to pay the initial partial payment he has been assessed in this case.

#### ORDER

IT IS ORDERED that plaintiff's motion for an enlargement of time within which to pay the \$83.11 assessment he has been ordered to pay in this case is GRANTED. The deadline within which plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$83.11 is extended to May 31, 2007. If, by May 31, 2007, plaintiff fails to make the initial partial payment or show cause for his failure to do so, I will notify the court of appeals of his non-compliance so that it may take whatever action it deems appropriate with respect to plaintiff's appeal.

Entered this 14th day of May, 2007.

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