

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

JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY and
JAMYI WITCH,

Defendants.

ORDER

03-C-027-C

JAMES KAUFMAN,

Petitioner,

v.

MATTHEW FRANK; THOMAS E. KARLEN;
RANDALL R. HEPP; CYNTHIA L. O'DONNELL;
RICHARD RAEMISCH; DANIELLE LACOST;
MYRON OLSON; ALAN MINSHALL; PERRY
NICHOLS, and APRIL OLIVERSON, and their
employees, agents and representatives,

Respondents.

ORDER

06-C-205-C

On April 21, 2006, I assessed petitioner James Kaufman a \$5.07 initial partial
payment of the fee for filing case no. 06-C-205-C and on April 25, 2006, I assessed him a

\$5.54 initial partial payment of the fee for filing an appeal in Case No. 03-C-27-C. I told petitioner that if he failed to make the initial partial payments by May 11 and May 18, 2006, respectively, he would be held to have withdrawn Case No. 06-C-205-C and I would notify the court of appeals of his failure to pay in Case No. 03-C-27-C so that it could take whatever action it deemed appropriate with respect to petitioner's appeal.

In response, petitioner wrote to the court advising it that prison officials were declining to issue a check from petitioner's account to pay the initial partial payments, contending that any money petitioner received would be credited first toward other financial obligations. On May 10, 2006, I issued an order in Case No. 03-C-27-C, asking prison officials to explain their decision to give priority to petitioner's other debts over his initial partial payments, noting that the Court of Appeals for the Seventh Circuit held in Walker v. O'Brien, 216 F.3d 626, 628 (7th Cir. 2000), and Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), that initial partial payments were to "come off the top" of all deposits to prisoner's accounts. The prison conceded error by submitting the full sum petitioner had earned between April 26, 2006 and now: \$2.96. That amount was credited toward petitioner's appeal in 03-C-27-C, leaving a balance of \$2.58 on petitioner's initial partial payment in that case and the full initial partial payment of \$5.07 in Case No. 06-C-205-C.

When this court initially assessed petitioner's initial partial payments in Case Nos. 03-C-27-C and 06-C-205-C, it did so in reliance on petitioner's prison trust fund account

statement, which showed that from February 10, 2006 through March 24, 2006 (the last day shown on the account statement), petitioner received regular bimonthly deposits of approximately \$21.20. Petitioner has not submitted an updated trust fund statement showing his income from March 25 to the present, but I infer from the fact that petitioner has earned only \$2.96 in the past month that his income has decreased. Nevertheless, because petitioner has not submitted evidence to the contrary, I will assume that petitioner continues to receive periodic deposits to his account, however small those deposits may be. Therefore, petitioner should continue to make contributions to his initial partial payments as he is able. I will extend the deadline for payment accordingly.

One final matter. Petitioner has asked the court to send a copy of this order to “Mr. Devendorff,” the financial supervisor of the Jackson Correctional Institution’s business office. Because Devendorff is not a party to this lawsuit, it would be improper for the court to mail its orders to him directly. Nevertheless, the prison remains obligated to forward all petitioner’s income to the court until his initial partial payments in Case Nos. 03-C-27-C and 06-C-205-C have been paid in full. If prison staff members misunderstand their responsibilities in this regard, petitioner may make a copy of this order available for their review.

ORDER

IT IS ORDERED that petitioner James J. Kaufman may

1. Have until June 23, 2006, in which to pay the remaining \$2.56 due as his initial partial payment for his appeal in Case No. 03-C-27-C; and

2. Have until July 14, 2006, in which to pay the \$5.07 due as his initial partial payment in Case No. 06-C-205-C.

Entered this 26th day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge