

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

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JOEL FLAKES,  
#027179  
Stanley Correctional Institution,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS and  
CORRECTIONS CORPORATION OF AMERICA,  
PAMELA WALLACE, Warden, Stanley Correctional  
Institution; JEROME SWEENEY, Unit Manager;  
Correctional Officer SGT. DORF; MS. PEGGY  
MEYER, Education Director; MS. STACEY BIRCH,  
Librarian; MR. LYNCH, ADA steering committee  
member and classification specialist,

Respondents.

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Petitioner Joel Flakes, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, has struck out under 28 U.S.C. § 1915(g). That means that he may not ask to proceed in forma pauperis in any new civil action unless his complaint concerns a matter suggesting he is “under imminent danger of serious physical injury.”

On July 7, 2006, petitioner attempted to file a civil action in this court that contained

numerous claims, the majority of which did not concern a matter suggesting that he is under imminent danger of serious physical injury. (Most of petitioner's complaint recounted alleged wrongdoings that occurred well in the past, while he was confined at a correctional facility in Whiteville, Tennessee.) However, although it was not entirely clear, it appeared possible that petitioner was alleging one potential claim that would qualify for the exception to § 1915(g). Therefore, in an order dated July 17, 2006, I advised petitioner that he could choose one of two options on or before August 3, 2006. He could pay the \$350 fee for filing his complaint, in which case the court would file his complaint as it was and screen it under 28 U.S.C. § 1915A. Or, he could amend his complaint to drop all of his claims except his possible claim that he is in dire need of hip replacement surgery and that one or more individuals at the Stanley Correctional Institution are being deliberately indifferent to that need. I noted that if petitioner chose the section option, he would have to name as respondents those persons who are presently personally involved in denying him the surgery.

Now petitioner has filed a proposed amended complaint, but it comes nowhere close to complying with this court's directive to limit his claim to alleging physical injury "that is imminent or occurring at the time the complaint is filed." Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Instead, he has amended the caption of the complaint to eliminate all of the individual respondents except the

Department of Corrections and Corrections Corporation of America and he continues to seek money damages from these entities for alleged violations of RICO, Wisconsin state law and the Wisconsin Constitution, Title II of the Americans with Disabilities Act of 1990 and the Federal Rehabilitation Act, as well as the Eighth and Fourteenth Amendments to the United States Constitution. He does not explain who, if anyone, has ordered hip replacement surgery within any recent time, or who at the Stanley Correctional Institution or within the Department of Corrections is refusing to permit the surgery, if it has been ordered. Consequently, petitioner will be denied leave to proceed in forma pauperis in this action on the ground that his complaint is not a complaint requiring application of the exception to § 1915(g).

In the order of July 17, 2006, I advised petitioner that he owed the \$350 fee for filing this lawsuit. I told him as well that if he did not file an amended complaint that qualified for the exception to § 1915(g) or pay the \$350 filing fee by August 3, 2006, I would consider that he did not want to pursue this action, and in that event, the clerk of court would close this file and advise the warden of the Stanley Correctional Institution that petitioner owed the filing fee nevertheless, so that it could be collected and sent to the court “in accordance with 28 U.S.C. § 1915(b)(2).”

Collection of the filing fee under § 1915(b)(2) would have been proper had petitioner’s proposed amended complaint qualified for an exception under § 1915(g).

However, because it does not, petitioner cannot utilize the installment payment mechanism in § 1915(b)(2). No part of § 1915 is applicable to him. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997), rev'd on other grounds by Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), and Lee v. Clinton, 209 F.3d 1025 (7th Cir.2000) (slow collection under § 1915(b)(2) for prisoners subject to § 1915(g) not available). But see Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998) (prison officials directed to collect from prisoner subject to § 1915(g) “all income” and “remit[] until full appellate filing fee has been paid.”). Petitioner must arrange for payment of the fee and submit it as quickly as he can. His failure to remit the fee for any reason other than complete destitution will result in the issuance of an order of the kind specified in Support Systems International, Inc. v. Mack, 45 F.3d 185 (7th Cir. 1995).

#### ORDER

IT IS ORDERED that petitioner’s request for leave to proceed in forma pauperis in this action is DENIED because his proposed amended complaint does not qualify as a complaint requiring application of the exception to 28 U.S.C. § 1915(g). The clerk of court is directed to close this case.

Further, IT IS ORDERED that petitioner is to pay the \$350 fee for filing this case. This sum must be paid in full. The warden of the Stanley Correctional Institution already

has been advised of petitioner's obligation to pay the fee. Petitioner is to pay the fee as quickly as he has money available in his account to pay it or this court will issue an order directing the clerks of the courts in this circuit to return to petitioner unfiled all pleadings he might submit that are not excepted under Support Systems International, Inc. v. Mack, 45 F.3d 185 (7th Cir. 1995).

Entered this 15th day of August, 2006.

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