

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

KENNETH V. AWE,

Petitioner,

v.

WISCONSIN DEPARTMENT
OF CORRECTIONS, PROGRAM
REVIEW COMMITTEE (KUHN,
SAWALL, HARTER and
MONFILS,)

Respondents.

ORDER

07-C-603-C

In an ordered entered in this case on October 25, 2007, I denied petitioner Kenneth Awe leave to proceed in forma pauperis because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g). In particular, I learned that in addition to two legally meritless cases petitioner had filed previously in this court, the federal court system's PACER website showed that petitioner had filed a case in the district court for the Eastern District of Missouri that had been dismissed for failure to state a claim upon which relief may be granted. The legally meritless case petitioner filed in Missouri was his third strike. When I denied petitioner pauper status in this case, I told him that he had to choose

between two options. He could pay immediately the full fee for filing this case, in which case I would screen the merits of his complaint under 28 U.S.C. § 1915A, or he could ask that his case be closed and still owe the \$350 filing fee. Now petitioner has filed a response to the October 25 order, in which he asks that his case be closed. He asks as well that he be excused from paying the filing fee.

Requiring a person who has struck out to pay the fee for bringing a fourth case even if that case is subsequently withdrawn or dismissed is not a new rule. In Sloan v. Lesza, 181 F.3d 857, 859 (7th Cir. 1999), the court of appeals stated expressly that a prisoner who seeks permission to proceed in forma pauperis after “a federal judge has held that § 1915(g) applies to a particular litigant” will lead to immediate termination of the suit and the filing fee remains due. Therefore, under ordinary circumstances, I would not be free to excuse petitioner’s obligation to pay the fee for filing this case. These are not ordinary circumstances, however.

In his response to the October 25 order, petitioner appears to be contending that he never intended this lawsuit to be filed. Instead, his complaint was sent to the court mistakenly by prison administrators without his consent. In particular, petitioner says that he asked prison officials for legal loans to mail two different documents and the mail room mixed them up. He says the envelope addressed to this court was supposed to contain documents he wanted to file in another case pending in this court, Awe v. Endicott, 07-C-

309-C, not the complaint that was filed in this case. As for the complaint now filed in this case, it was supposed to have been mailed to a lawyer from whom petitioner was soliciting potential representation.

Although petitioner's suggestion that it was an accident that he filed his complaint with this court is worthy of heavy skepticism, I will accept it nonetheless on this one occasion. Therefore, I will direct the clerk of court to close this file and to eliminate any reference to petitioner's obligation to pay the fee for filing this action that may have been entered into the court's electronic financial record system.

ORDER

IT IS ORDERED that

1. The Clerk of Court close this case; and
2. The requirement that petitioner pay the fee for filing this action is waived. The clerk of court is requested to correct the court's electronic financial records for petitioner

accordingly.

Entered this 16th day of November, 2007.

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