

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

MICHAEL C. MAYFIELD,

Petitioner,

v.

STANLEY CORRECTIONAL INSTITUTION,

Respondent.

ORDER

08-cv-395-slc

On July 11, 2008, I assessed petitioner Michael Mayfield an initial partial payment of the \$350 filing fee in the amount of \$4.55 and gave him until August 1, 2008, in which to make the payment. Now, petitioner has submitted letters to the court dated July 31, 2008 and August 1, 2008, which I construe as requests for an extension of time to make the initial partial payment.

In his July 31 letter, petitioner says that he submitted "Interview and Request forms along with several memos" to Amy Millard, the prison business manager, so that his initial partial payment could be sent to the court. However, petitioner received a response on July 30 stating that he would need to "send a stamped & addressed envelope & a signed disbursement to send a file fee." Petitioner claims that he "sent all requests and respectable paperwork in order for the business office to do their job" but his requests have been "ignored." In his August 1 letter, petitioner claims that on July 25 he had sufficient funds in his account with which to make his initial partial payment but deductions were made instead to pay for his legal loans. Attached to the August 1 letter is a copy of petitioner's trust fund account statement for the

month of July, 2008 showing that petitioner received a \$50 deposit on July 25, 2008 and that \$5.02 was withheld for his legal loans.

It is unclear why the business office did not submit petitioner's payment from the \$50 deposit he received on July 25. Initial partial payments assessed under 28 U.S.C. § 1915(b)(1) are to receive priority over petitioner's other debts. Walker v. O'Brien, 216 F.3d 626, 628 (7th Cir. 2000)(initial partial payments are to "come off the top" of all deposits to prisoner's account). That means that the initial partial payment assessed in this case is to be given priority over petitioner's other debts.

One other matter calls for comment. In his July 31 letter petitioner indicates that he has not been permitted to use his release account funds to pay the initial partial payment in this case. Petitioner should be aware that the language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available, Carter v. Bennett, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005), and the state of Wisconsin has conceded that this provision of the Prison Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, if sufficient funds do not exist in petitioner's regular account to pay his initial partial payment, he should be allowed to use his release account to pay the remainder of the assessed amount. Accordingly, I will give petitioner additional time in which to make his payment. Petitioner may show this order to the appropriate prison authorities to insure they understand the nature of his disbursement request and the scope of their obligation.

ORDER

IT IS ORDERED that petitioner's requests for an extension of time to pay the initial partial filing fee (dkt. ##5,6) are GRANTED. He is to submit a check or money order made payable to the clerk of court in the amount of \$4.55 on or before August 27, 2008. If, by August 27, 2008, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 6th day of August, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge