

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

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STANLEY MARTIN,

ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,  
Wisconsin Resource Center,

Respondent.  
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Petitioner Stanley Martin is a patient confined at the Sand Ridge Secure Treatment Center pursuant to Chapter 980 of the Wisconsin Statutes. In an order entered on September 20, 2011, I allowed petitioner to proceed in forma pauperis on appeal and assessed him an initial partial payment of the \$455 appeal filing fee in the amount of \$0.34. Now, petitioner has filed a motion to correct the order entered on September 20, 2011, to clarify that he is not a prisoner subject to the 1996 Prison Litigation Reform Act and therefore does not have to pay the remainder of the \$455 appeal fee in monthly installments under 28 U.S.C. § 1915(b)(2). In addition, petitioner appears to object to having to prepay any portion of the \$455 appeal filing fee.

I agree with petitioner that because he is a patient at the Sand Ridge Secure Treatment

Center, he is not a prisoner and therefore not subject to the PLRA. West v. Macht, 986 F.Supp. 1141, 1143 (W. D. Wis. 1997). However, it was not erroneous to conclude that petitioner has the means to prepay a portion of the filing fee. As I advised petitioner in an earlier order dated September 6, 2011, this court has adopted the PLRA's formula for determining indigence for all institutionalized persons, even when the PLRA does not apply of its own force. Longbehn v. Reno, 27 F.Supp. 2d 1162, 1164-65 (W. D. Wis. 1998). An initial partial payment of \$0.34 was correctly calculated as the portion of the \$455 appeal filing fee petitioner will have to pay as a condition of proceeding in forma pauperis. Moreover, despite petitioner's misunderstanding, he does remain responsible for paying the remainder of the appeal filing fee. Where I erred was in advising petitioner that he would be required to pay the remainder in monthly installments pursuant to 28 U.S.C. § 1915(b)(2). That provision of the in forma pauperis statute applies to prisoners only. Nevertheless, whether or not a litigant is a prisoner, a grant of leave to proceed in forma pauperis does not eliminate the litigant's filing fee debt. All it does is to permit the litigant to proceed without prepaying the full amount. Non-prisoners, unlike prisoners, may pay the remainder in any increments they wish at such time as they can afford to do so. The collection provision in § 1915(b)(2) does not apply to them. Therefore, to the extent that the September 20, 2011 order concluded that petitioner is a prisoner subject to the provisions of the PLRA, I am vacating that portion of the order. Furthermore, because the time for petitioner to pay the \$0.34 portion of the filing fee expires on October 10, 2011, I will extend the deadline within which he is to submit his check or money order until October 18, 2011.

ORDER

IT IS ORDERED that petitioner Stanley Martin's motion to correct the September 20, 2011 order is GRANTED in part. The September 20, 2011 order is vacated to the extent that the order concluded that petitioner is a prisoner subject to the PLRA. However, petitioner must prepay \$0.34 of the \$455 appeal filing fee as a condition of proceeding in forma pauperis on appeal. Petitioner may have an extension of time to October 18, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$0.34. If, by October 18, 2011, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Entered this 26th day of September, 2011.

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