

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

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DA VANG,

Plaintiff,

v.

MICHAEL W. HOOVER, Judge for  
the Wisconsin Court of Appeals, District 3,  
in his individual and official capacities,

Defendant.

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ORDER

11-cv-150-slc

Plaintiff Da Vang, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, has submitted a proposed complaint. Plaintiff has submitted a cover letter requesting that the court issue an order directing the financial business office pay his filing fee using his release account. Although this court appreciates the initiative plaintiff has shown to pay the full filing fee up front, he cannot use his release account funds in the manner he requests. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. 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). 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. However, the law does not authorize or require court officials to use funds in an inmate release account to pay the full amount of the filing fee. Because plaintiff cannot use his release account funds to pay the entire \$350 filing fee, I will deny his motion.

Plaintiff's complaint was submitted on February 23 2011. His trust fund account statement should cover the six-month period beginning approximately August 23, 2010 and ending approximately February 23, 2011. Once plaintiff has submitted the necessary statement,

I will calculate his initial partial payment, less the \$3.50 check he has already submitted, and advise him of the amount he will have to pay before the court can screen the merits of his complaint under 28 U.S.C. § 1915(e)(2).

In another matter, plaintiff has submitted a letter requesting that his complaint documents be returned to him. Plaintiff's request will be granted. The clerk's office is directed to return plaintiff's complaint documents to plaintiff.

### ORDER

IT IS ORDERED that

1. Plaintiff Da Vang's request to use release account funds to pay the \$350 filing fee is DENIED.
2. Plaintiff may have until March 24, 2011, in which to submit a trust fund account statement for the period beginning approximately August 23 2010 and ending approximately February 23, 2011. If, by March 24, 2011, plaintiff fails to respond to this order, I will assume that he wishes to withdraw this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 2<sup>nd</sup> day of March, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge