

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

DA VANG,

Plaintiff,

v.

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

Defendant.

ORDER

11-cv-150-slc

Plaintiff has responded to the March 2, 2011 order in this case directing him to submit a trust fund account statement for the full six-month period immediately preceding the filing of his complaint. I have examined a copy of this statement and reviewed this court's own financial records. From these documents, I conclude that plaintiff has not been paying the debts he incurred under the 1996 Prison Litigation Reform Act in connection with another lawsuit he filed previously in this district, Vang v. Marathon County Sheriff Department, 97-C-614-C. Therefore, plaintiff is not entitled to proceed in forma pauperis in this action at this time.

On October 31, 1997, plaintiff made the initial partial payment of \$40.03 toward

the fee for filing his complaint in case no. 97-C-614-C. In subsequent orders entered in case no. 97-C-614-C, the court reminded plaintiff of his obligation to pay the remainder of the \$150 filing fee according to 28 U.S.C. § 1915(b)(2). Those letters did not have the desired effect; plaintiff has an outstanding balance in case no. 97-C-614-C of \$109.97. Until he is becomes current with his payments toward that balance, he will not be allowed to proceed in forma pauperis in this case or in any new case that he may file.

28 U.S.C. § 1915(b)(2) provides that “after payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account” When plaintiff filed his complaint in case no. 97-C-614-C and made the initial partial payment, he became obligated to pay 20 percent of his income to reduce the balance due on the \$150 filing fee. Newlin v. Helman, 123 F.3d 429, 436 (7th Cir. 1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). The trust fund account statement plaintiff submitted in this case shows that he has not been paying as required.

In Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. “If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on

personal items until they can be applied properly.” Id. at 776. Nonpayment of obligations a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to file future suits in forma pauperis, just as if the prisoner had a history of frivolous litigation. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

From the trust fund account statement that plaintiff filed in this case, I can tell that he is in arrears for at least \$64.79 for months in which he had sufficient funds in his prison account to make payments toward his obligation in 97-Cr-614-C. He is probably in arrears for more than this (after all, he owes this court \$109.97), but I cannot tell because the trust fund information is not complete.

The chart below illustrates the calculation performed in reviewing plaintiff's financial statement. The first column shows the month in which plaintiff received income; the second column shows the amount of his monthly income; the third column shows the amount plaintiff owed, which is 20% of the previous month's income; the fourth column shows the amount of plaintiff's monthly payments; and the last column shows the minimum amount I am able to determine that plaintiff owes.

Month	Income	Amount Owed	Amount Paid	Amount Still Due
September 2010	\$21.08		\$0	

October 2010	\$52.91	\$4.22	\$0	\$4.22
November 2010	\$50.30	\$10.58	\$0	\$10.58
December 2010	\$51.16	\$10.06	\$0	\$10.06
January 2011	\$52.11	\$10.23	\$0	\$10.23
February 2011	\$47.96	\$10.42	\$0	\$10.42
March 2011	\$48.48	\$9.59	\$0	\$9.59
April 2011		\$9.69	\$0	\$9.69
TOTAL	\$324.00	\$64.79	\$0	\$64.79

In sum, it is not possible to determine the exact amount plaintiff should have paid toward his debts because the court does not have the relevant trust fund account statements from plaintiff. Regardless, that job belongs to plaintiff and prison officials at the institutions in which he was confined. Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (order under 28 U.S.C. § 1915(b) directs warden as trustee of account to disburse amounts owed in accordance with statutory directive).

As soon as this court is notified that plaintiff is no longer in arrears for the filing fees in case no. 97-C-614-C, he may renew his request for leave to proceed in forma pauperis in this case. However, he should take note that he will have to support his request for leave to proceed in this case with a certified trust fund account statement for the full six-month

period immediately preceding the filing of his renewed request.

ORDER

IT IS ORDERED that until plaintiff Da Vang has paid the amounts he is in arrears under 28 U.S.C. § 1915(b)(2) in Vang v. Marathon County Sheriff Department, 97-C-614-C, he may not apply for leave to proceed in forma pauperis in any future action in this court except under the circumstances permitted under 28 U.S.C. § 1915(g).

FURTHER, IT IS ORDERED that plaintiff's request to file in forma pauperis in this case is DENIED at this time. The clerk of court is directed to close the file.

Entered this 29th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge