

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TONI TOSTON,

Plaintiff,

v.

Case No. 16-cv-1112-pp

**PAMELA ZANK,
JOHN O'DONOVAN, and
WILLIAM POLLARD,**

Defendants.

**DECISION AND ORDER GRANTING PLAINTIFF'S MOTION TO USE
RELEASE ACCOUNT TO PAY INITIAL PARTIAL FILING FEE (DKT. NO. 8)
AND DIRECTING PLAINTIFF TO PAY INITIAL PARTIAL FILING FEE FROM
RELEASE ACCOUNT ON OR BEFORE FRIDAY, SEPTEMBER 30, 2016**

On August 19, 2016, the court directed the plaintiff, Toni Toston, to pay an initial partial filing fee of \$53.19 on or before September 16, 2016. Dkt. No. 6. On August 24, 2016, the court received a motion from the plaintiff asking to use funds in his release account to pay the initial partial filing fee. Dkt. No. 8. The plaintiff submitted a certified copy of his prison trust account statement showing that he does not have sufficient funds in his regular account to pay the initial partial filing fee but that he has ample funds in his release account. Dkt. No. 9.

The PLRA requires courts to collect filing fees from “prisoner’s account.” 28 U.S.C. § 1915(b). As stated in Doty v. Doyle, 182 F. Supp. 2d 750 (E.D. Wis. 2002):

the courts have found that when a prisoner's general fund has insufficient funds to pay filing fees, both the . . . Wisconsin PLRA . . . and the . . . federal PLRA . . . authorize the courts to order that the money in a prisoner's release account be made available for that purpose. Spence v. Cooke, 222 Wis. 2d 530, 537 (Ct. App. 1998); Spence v. McCaughtry, 46 F. Supp. 2d 861 (E.D. Wis. 1999). (All the same, in deference to the Wisconsin public policy behind release accounts, judges of this district do not routinely look to prisoners' release accounts when they assess initial partial filing fees under the federal PLRA, Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001), although they will do so upon request from the prisoner, as in Spence v. McCaughtry.)

Id. at 751.

The plaintiff has sufficient funds in his release account to pay the initial partial filing fee for this case, and the court respects the plaintiff's choice to use his release funds to pay his initial partial filing fee. The court also will provide the plaintiff with additional time to pay the initial filing fee from his release account.

The court **GRANTS** the plaintiff's motion to use release account to pay initial partial filing fee. Dkt. No. 8.

The court **ORDERS** that, upon the plaintiff's request, the warden at the correctional institution where the plaintiff is incarcerated shall withdraw a total of **\$53.19** from the plaintiff's release account and forward that sum to the clerk of this court as the initial partial filing fee in this case. The warden must make the payment on or before **Friday, September 30, 2016**.

The court will send a copy of this order to the warden at Waupun Correctional Institution.

Dated in Milwaukee, Wisconsin this 1st day of September, 2016.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

HON. PAMELA PEPPER
United States District Judge