

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

JOSE A. ALICEA, JESSICA BARRERA
and N.A.,

Plaintiffs,

v.

EDWARD F. WALLS, CINDY O'DONNELL and
WILLIAM POLLARD,

Defendants.

ORDER

13-cv-302-bbc

In an order entered in this case on June 12, 2013, I directed plaintiff Jessica Barrera to submit written confirmation that she wished to proceed in this action jointly with plaintiff Alicea and if she did, to submit an affidavit to proceed without prepayment of fees and/or costs. The court received from plaintiff Barrera a statement indicating she wishes to jointly pursue this case with plaintiff Alicia along with the required financial affidavit¹.

The standard for determining whether a non-incarcerated plaintiff qualifies for indigent status is the following:

- From plaintiff's annual gross income, the court subtracts \$3,700 for each dependent excluding the plaintiff.
- If the balance is less than \$16,000, the plaintiff may proceed without any prepayment of fees and costs.
- If the balance is greater than \$16,000 but less than \$32,000, the plaintiff must prepay half the fees and costs.
- If the balance is greater than \$32,000, the plaintiff must prepay all fees and costs.

¹ The court notes, that the written response from plaintiff Barrera was mailed by plaintiff Alicea from W.C.I. and that the petition and affidavit to proceed without prepayment of the fees and costs was not the form sent to plaintiff Barrera on June 12, 2013, which had a typewritten caption and case number.

- Substantial assets or debts require individual consideration.

In this case, plaintiff Barrera has one dependent. Her monthly income is \$800, which makes her annual income \$9,600. Plaintiff Barrera's balance comes to \$5,900 after subtracting \$3,700 for her dependent. Because plaintiff's income is less than \$16,000, she can proceed without any prepayment of fees or costs.

As noted in the June 12, 2013 order, plaintiff Alicea has paid the \$350 filing fee. Nevertheless, because Alicea is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. Under the act, an incarcerated plaintiff cannot proceed with this action unless the court grants him permission to proceed after screening his complaint pursuant to 28 U.S.C. § 1915.

Accordingly, IT IS ORDERED that the complaint filed by Jose Alicea and Jessica Barrera is taken under advisement. As soon as the court's calendar permits, plaintiffs' complaint will be screened pursuant to 28 U.S.C. § 1915 to determine whether the case must be dismissed either because the complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Plaintiffs will be notified promptly when such a decision has been made. In the meantime, if plaintiffs need to communicate with the court about this case, they should be sure to write the case number shown above on their communication.

Entered this 17th day of October, 2013.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge