

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

EFRAIN CAMPOS, et al.,

Plaintiffs,

ORDER

v.

Case No. 17-cv-545-jdp

MICHAEL DITTMAN, et al.,

Defendants.

This is a group action brought by plaintiffs, inmates in the custody of the Wisconsin Department of Corrections, alleging violations of their constitutional rights. In an order entered in this case on July 20, 2017, I gave each plaintiff until August 11, 2017, to either submit the \$400 filing fee or a motion for leave to proceed without prepaying the filing along with a trust fund account. Dkt. 8. Plaintiffs Campos, Newago and Nieto each filed a motion for leave to proceed without prepayment of the filing fee along with a six-month trust fund account statement; plaintiff Robert Wirth has yet to respond to the July 20 order. On August 4, 2017, shortly after filing a motion for leave to proceed without prepaying the filing fee, plaintiff Campos filed a letter, which I will construe as a motion for reconsideration of the July 20 order. Dkt. 25. In his motion, plaintiff Campos asserts that the plaintiffs in this case should not be required to submit individual \$400 filing fees.

The general statute addressing filing fees is 28 U.S.C. § 1914(a), which states that “[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$400” However, under *Boriboune v. Berge*, 391 F.3d 852, 856 (7th Cir. 2004), each plaintiff is subject to the Prisoner Litigation Reform Act and must pay a separate \$400 filing

fee. *Boriboune* considered the applicability of § 1914(a) to lawsuits filed by prisoners. The court held that although generally 28 U.S.C. § 1914(a) requires only one filing fee for each *case* filed, lawsuits filed by prisoners require one filing fee for each *prisoner* because 28 U.S.C. § 1915(b) comes into play, a statute that “specifies a per-litigant approach to fees.” *Id.* at 856. Therefore, I will deny plaintiff Campos’s motion for reconsideration of the July 20 order.

At this point, plaintiff Campos has been denied leave to proceed without prepayment of the filing fee, dkt. 24, and was given a deadline of August 23, 2017, to submit the \$400 fee for filing this case. However, to date, plaintiff Campos has not paid the \$400 filing fee. Plaintiffs Newago and Nieto have been granted leave to proceed without prepaying the filing fee; plaintiff Newago was assessed an initial partial payment of \$235.10 and plaintiff Nieto was assessed an initial partial payment of \$350. Both plaintiffs Newago and Nieto have paid their initial partial payments. As previously stated in this order, plaintiff Robert Wirth has yet to respond to the July 20 order.

Therefore, plaintiffs Campos and Wirth may have until October 5, 2017, to indicate whether they wish to pursue this case. Plaintiff Campos must submit the \$400 fee or advise the court in writing why plaintiff is not able to submit the assessed amount on or before October 5. Plaintiff Wirth must submit either the \$400 fee or a motion for leave to proceed without prepayment of the fee along with a six-month trust fund account statement by October 5. If plaintiffs Campos and Wirth fail to respond to this order by October 5, I will assume that they wish to withdraw from this action voluntarily.

Lastly, plaintiff Stanley Newago has filed a motion to use his release account funds to pay the remaining balance of the \$350 fee he owes for filing this case. Dkt. 31. However, with the exception of initial partial payments, this court does not have the authority to tell state

officials whether, and to what extent, a prisoner should be able to withdraw money from a release account. For this reason, I will deny plaintiff Newago's motion.

ORDER

IT IS ORDERED that:

1. Plaintiff Efrain Campos's motion for reconsideration, dkt. 25, is DENIED.
2. Plaintiffs Efrain Campos and Robert Wirth may have until October 5, 2017, to inform the court whether they wish to pursue this case. If plaintiff Campos and/or Wirth fail to respond to this order by October 5, I will assume that that plaintiff wishes to withdraw from this action voluntarily.
3. Plaintiff Stanley Newago's motion to use his release account funds to pay the remaining balance of the \$350 fee for filing this case, dkt. 31, is DENIED.

Entered this 15th day of September, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge