

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KARI SUNDSTROM,
ANDREA FIELDS,
LINDSEY BLACKWELL,

Plaintiffs,

v.

Case No. 06-C-0112

MATTHEW J. FRANK,
JUDY P. SMITH,
THOMAS EDWARDS,
JAMES GREER,
ROMAN KAPLAN, M.D.,

Defendants.

ORDER GRANTING REQUEST FOR REFUND OF FEES

When plaintiffs Kari Sundstrom and Andrea Fields filed this case on January 24, 2006, they paid \$500 in filing fees. Following the filing of their amended complaint on January 27, adding Lindsey Blackwell as a plaintiff, Blackwell paid an additional \$250. When these amounts were paid, counsel thought the Prison Litigation Reform Act, 28 U.S.C. § 1915(b), required the payment of a \$250 filing fee for each prisoner.

Subsequently, counsel came to a different conclusion. In a letter filed February 10, counsel asks for a refund of \$500, arguing that under *Boriboune v. Berge*, 391 F.3d 852, 855 (7th Cir. 2004), only prisoner plaintiffs seeking to proceed in forma pauperis are required to pay the filing fee individually. Counsel argues that where the plaintiffs did not seek leave to proceed in forma pauperis, the standard \$250 filing fee for a civil action should apply.

The court agrees. The “norm in civil litigation” is “one filing fee per suit, rather than per litigant.” *Id.* Title 28 U.S.C. § 1914(a) implies that the filing fee is \$250¹ per case rather than per litigant. *Id.*; see § 1914(a) (“The clerk of each district court shall require *the parties* instituting any *civil action*, suit or proceeding in such court . . . to pay a filing fee of \$250.”) (emphasis added). The fee-per-litigant approach arises only from 28 U.S.C. § 1915(b)(1), which states (emphasis added) that “*if a prisoner brings a civil action or files an appeal in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee.” In *Boriboune* the Seventh Circuit stated that § 1915(b) should be taken at face value. It then held “that one price of *forma pauperis* status is each prisoner’s responsibility to pay the full fee in installments (or in advance, if § 1915(g) [the three-strikes provision] applies), no matter how many other plaintiffs join the complaint.” 391 F.3d at 856. All four plaintiffs in *Boriboune* had sought in forma pauperis status. *Id.* at 853.

Because plaintiffs here never moved for in forma pauperis status, § 1915(b) was never triggered. Nor is § 1915(g) applicable to these plaintiffs. Thus, the standard rule of one filing fee per lawsuit applies.

The court acknowledges that Judge Barbara B. Crabb in the Western District of Wisconsin has suggested that *Boriboune* applies more broadly, requiring a separate filing fee even from prisoners who do not seek in forma pauperis status. In an unpublished opinion, she stated that

the court of appeals held in *Boriboune* that joint litigation does not relieve any prisoner of the duties imposed upon him under the 1996 Prison Litigation Reform Act, including the duty to pay

¹The filing fee has since risen to \$350 per case, but plaintiffs filed their complaint and amended complaint before the increase.

the full amount of the filing fees, either in installments *or in full if the circumstances require it*. This means that before the court will screen the complaint, *each petitioner will have to pay either a full filing fee* if the petitioner does not qualify to proceed *in forma pauperis*, or an initial partial payment of the fee calculated pursuant to the method described in 28 U.S.C. § 1915(b).

Pippin v. Frank, No. 04-C-582-C, 2005 WL 503823, *2 (W.D. Wis. Mar. 1, 2005).

Judge Crabb's references to full payment "if the circumstances require it" may refer only to those prisoners barred from proceeding in forma pauperis by § 1915(g), as suggested in *Boriboune*. But to the extent she may be suggesting that separate fees are required by all prisoners paying in full, this court disagrees respectfully. The *Boriboune* court expressly based its reasoning on the language of § 1915(b) and said that the trade-off for proceeding in forma pauperis is a separate fee from each prisoner plaintiff. Here, the prisoner plaintiffs never sought to proceed in forma pauperis, thus § 1915(b) is inapplicable and no trade-off occurs. As acknowledged by the *Boriboune* court, the standard rule of one filing fee per case rather than per litigant applies when § 1915(b) does not. Moreover, Judge Crabb's statement regarding full payment of the filing fee appears to be dicta. A review of the docket for the *Pippin* case indicates that Pippin did seek, and was granted, leave to proceed in forma pauperis. Thus, Judge Crabb did not directly face the question presently before this court.

Requiring every prisoner plaintiff, in forma pauperis or not, to pay the full filing fee might further the intent of Congress to curtail prisoner litigation. See *Hubbard v. Haley*, 262 F.3d 1194, 1196 (11th Cir. 2001) (stating that the Eleventh Circuit as well as several other circuits had "recognized the intent of Congress to taper prisoner litigation" through the PLRA). But, as the Seventh Circuit stated in *Boriboune*, Congress's "reason to do

something differs from having *done* it.” 391 F.3d at 854. Whether charging all prisoner plaintiffs a full filing fee is a good idea is not the basis for decision. The language of the statute controls rather than Congressional intent. See *Clay v. Rice*, No. 01-C-50203, 2001 WL 1380526, *2 (N.D. Ill. Nov. 5, 2001) (“Although district courts are tempted to apply common sense to bandage a badly-drafted statute [i.e., § 1915(b)], lawmaking is Congress’s responsibility, not ours.”). The court takes §§ 1914 and 1915(b) as well as *Boriboune* at their word. Separate filing fees are required only from prisoner plaintiffs seeking leave to proceed in forma pauperis.

Therefore,

IT IS ORDERED that the request for a refund of overpaid filing fees is granted and the clerk of court return \$500 to counsel for plaintiffs.

Dated at Milwaukee, Wisconsin, this 12th day of July, 2006.

BY THE COURT

s/ C. N. CLEVERT, JR.

C. N. CLEVERT, JR.

U. S. District Judge