

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

JAMES EDWARD SMITH  
ADC #103093

PLAINTIFF

v.

No. 5:12-cv-409-DPM-PSH

T. DOBBS, Varner Unit, ADC

DEFENDANT

ORDER

1. Smith has filed *pro se* papers appealing this Court's 25 August 2017 Order. *No 81, 83 & 86*. While the United States Court of Appeals for the Eighth Circuit will decide its jurisdiction, Smith's appeal to that Court appears premature: this Court hasn't entered a final, appealable Order; and there's no basis for certifying an interlocutory appeal. 28 U.S.C. §§ 1291 & 1292; *Dieser v. Continental Casualty Company*, 440 F.3d 920, 923–24 (8th Cir. 2006).

Nonetheless, if Smith wants to appeal, then he must either pay the \$505 appellate filing fee or file an application to proceed *in forma pauperis* on appeal. *No 84*. If the Court grants Smith permission to proceed *in forma pauperis*, then the \$505 appellate filing fee will be deducted from his prison trust account in monthly installments. 28 U.S.C. § 1915(b)(1). And if Smith doesn't respond to the Clerk's appellate filing fee notice by 30 October 2017, then this

monthly payment schedule for the remainder of the filing fee. *No 84 at 2.*

2. The Court appointed a lawyer at Smith's request. *No 48 & 49.* But Smith continues to file *pro se* papers. He can't have it both ways: Smith must either let Davis exercise his best legal judgment, or Smith must represent himself. The Court would benefit from having Davis continue to represent Smith—especially if Smith's motion for default judgment is granted, and this case proceeds to a damages trial, as Magistrate Judge Harris recommends. *No 87.* But whether to represent himself is ultimately Smith's decision. While there's no constitutional right to self-representation in civil cases, there is a statutory right to represent oneself. 28 U.S.C. § 1654; *Andrews v. Bechtel Power Corporation*, 780 F.2d 124, 137 (1st Cir. 1985).

The Court directs Davis to take Smith a copy of this Order and to visit with him in person about the proposed *pro se* appeal, the pending recommendation, and the representation issue. Davis must file a status report about these issues as soon as practicable, and no later than 30 October 2017. Counsel's motion to withdraw, *No 82*, will abide that report.

3. In the circumstances, the Court extends the time for any party to object to the recommendation until 15 November 2017.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.  
United States District Judge

12 October 2017