

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Lucius R. Allen,

Plaintiff,

v.

Civil No. 08-6366 (JNE/JSM)
ORDER

Karen Jussila et al.,

Defendants.

This case is before the Court on remand from the Eighth Circuit Court of Appeals for the limited purposes of determining Lucius Allen's in forma pauperis (IFP) status and assessing the appellate filing fees pursuant to 28 U.S.C. § 1915 (2006). In an Order dated November 30, 2010, this Court assessed the \$455 appellate filing fees and granted Allen an extension of time to submit an application for IFP status. On January 18, 2011, the Court received Allen's application for IFP status, which is dated January 10, 2011. For the reasons set forth below, the Court grants Allen's application.

To qualify for IFP status on appeal, a prisoner who appeals from a judgment in a civil action must submit information that demonstrates the prisoner's inability to pay, or give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1). The prisoner must also submit a certified copy of the trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the notice of appeal. *Id.* § 1915(a)(2). Even if the prisoner obtains IFP status on appeal, the prisoner is liable for payment in full of the \$455 appellate filing fees without regard to the outcome of the appeal. *Id.* § 1915(b)(1); *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (per curiam). By filing a notice of appeal, the prisoner consents to the deduction of an initial partial appellate filing fee and the remaining installments from his prison account by prison officials. *Henderson*, 129 F.3d at 484. Even if the prisoner is financially

eligible to proceed IFP on appeal, the prisoner may not appeal IFP if the district court “certifies in writing that [the appeal] is not taken in good faith.” 28 U.S.C. § 1915(a)(3).

Based on the information submitted by Allen, the Court finds that he is financially eligible for IFP status on appeal. His initial partial appellate filing fee is \$22.50.¹ The Clerk of Court shall (1) notify the prison officials at the institution where Allen is incarcerated to pay Allen’s \$22.50 initial partial appellate filing fee from Allen’s account; (2) notify the prison officials to pay the remaining balance of Allen’s appellate filing fees, \$432.50, from Allen’s account in the manner prescribed by 28 U.S.C. § 1915(b)(2); and (3) send a copy of this Order to Allen and to the prison officials. *See Henderson*, 129 F.3d at 485.

Although the Court remains satisfied that Allen’s claims were properly addressed, the Court declines to certify that Allen’s appeal is not taken in good faith. Accordingly, the Court grants Allen’s application to proceed IFP on appeal.

¹ According to Allen’s trust account, the total amount of deposits to his trust account during the preceding six months was \$675.00, an average monthly deposit of \$112.50. Although the average monthly balance was not provided, it appears that the average monthly deposit is greater than the average monthly balance. Pursuant to § 1915(b)(1), the initial partial appellate filing fee that Allen is required to pay is \$22.50 ($\$112.50 * 20\% = \22.50). The Court notes that the Certificate of Authorized Prison Official submitted with Allen’s application lists Allen’s average monthly deposit as \$25.67. According to Allen’s trust account statement, however, \$25.67 is the “Local Max. Balance – Prev. 30 Days.”

Based on the files, records, and proceedings herein, and for the reasons stated above, IT

IS ORDERED THAT:

1. The prison officials at the institution where Allen is incarcerated shall pay the \$22.50 initial partial appellate filing fee from Allen's account to the Clerk of Court.
2. The prison officials at the institution where Allen is incarcerated shall pay the remaining balance of Allen's appellate filing fees, \$432.50, from Allen's account to the Clerk of Court in the manner prescribed by 28 U.S.C. § 1915(b)(2).
3. Allen's application to proceed on appeal IFP [Docket No. 152] is GRANTED.
4. The Clerk of Court shall send copies of this Order to Allen, to the prison officials at the institution where Allen is incarcerated, and to the United States Court of Appeals for the Eighth Circuit.

Dated: January 19, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge