

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARVEL JONES,)	CASE NO. 4:06CV3314
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
FRANCIS BRITTEN,)	
)	
Defendant.)	

This matter is before the court on Plaintiff’s Notice of Appeal. (Filing No. [135](#).) Plaintiff did not submit the appellate filing fee of \$455.00, nor did he submit a motion to proceed in forma pauperis (“IFP”). (Filing No. [136](#).) Plaintiff is a prisoner and has previously been granted leave to proceed IFP. (Filing No. [96](#).)

Pursuant to the Prison Litigation Reform Act (“PLRA”), an incarcerated civil appellant is required to pay the full amount of the \$455.00 filing fee by making monthly payments to the court, even if he or she is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#). Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” [Henderson v. Norris, 129 F.3d 481, 483 \(8th Cir. 1997\)](#) (internal citations omitted).

Henderson established the following procedures for notifying pro se prisoners of their appellate filing fee obligations:

- (1) When the district court notifies the prisoner ... in a civil action of its judgment, the court shall notify the prisoner that:
 - (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full \$[455] appellate filing fees regardless of the outcome of the appeal;

(b) by filing a notice of appeal the prisoner consents to the deduction of the [fees] from the prisoner's prison account by prison officials;

(c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and

(d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

[Id. at 483-84.](#)

Therefore, the court will permit Plaintiff additional time to consider the effect of filing a notice of appeal in this action in light of the foregoing notification. Plaintiff shall have 10 days in which to file a notice of withdrawal of appeal. In the event that Plaintiff does withdraw his appeal, he will not be liable for the \$455.00 appellate filing fee. In the event that Plaintiff seeks to proceed with his appeal, he shall submit to the Clerk of the court either the full \$455.00 appellate filing fee or a certified copy of his prison account for the last six months within 20 days of the date of this order. As set forth in *Henderson*, if Plaintiff does not timely submit the required prison account information, the court will assess "an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances." [Henderson, 129 F.3d at 484.](#)

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until November 17, 2008, in which to file a notice of withdrawal of appeal in this matter. If Plaintiff does file a notice of withdrawal of appeal, he will not be liable for the \$455.00 appellate filing fee and the appeal will not proceed;

2. In the event that Plaintiff seeks to proceed with his appeal, he shall submit to the Clerk of the court either the full \$455.00 appellate filing fee or a certified copy of his prison account for the last six months no later than November 17, 2008;
3. If Plaintiff does not timely submit the required prison account information, the court will assess an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances;
4. The Clerk of the court shall not process the appeal in this matter pending further order of the court; and
5. The Clerk of the court is directed to set a pro se case management deadline with the following text: November 17, 2008: deadline for Plaintiff to file notice of withdrawal of appeal.

DATED this 6th day of November, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge