

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT E. HUNT,)	4:11CV3086
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
ROBERT HOUSTON, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff’s Notice of Appeal, filed on May 30, 2012. (Filing No. [43](#).) Plaintiff did not submit the full appellate filing fee or a motion for leave to proceed in forma pauperis. (*See* Docket Sheet.) However, Plaintiff submitted a partial appellate filing fee in the amount of \$450.00 on June 14, 2012. Although Plaintiff did not submit a request to proceed in forma pauperis, after a review of the records before the court, Plaintiff is permitted to proceed IFP.

However, pursuant to the Prison Litigation Reform Act (“PLRA”), a prisoner plaintiff is required to pay the full amount of the court’s \$455.00 appellate filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. [28 U.S.C. § 1915\(b\)](#). The PLRA “makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” [Jackson v. N.P. Dodge Realty Co., 173 F. Supp. 2d 951 \(D. Neb. 2001\)](#) (citing [In re Tyler, 110 F.3d 528, 529 \(8th Cir. 1997\)](#)). The appellate filing fee is assessed when the district court receives the prisoner’s notice of appeal. [Henderson v. Norris, 129 F.3d 481, 485 \(8th Cir. 1997\)](#).

Pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint. Accordingly, based on the records before the court, the initial partial filing fee is **\$43.39**, based on average monthly balance of **\$216.93**. (Filing No. [47](#).)

Because Plaintiff has already paid \$450.00, substantially more than the assessed initial partial filing fee, the Clerk of the court may process the appeal.

In addition to the initial partial filing fee, Plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” [28 U.S.C. § 1915\(b\)\(2\)](#). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

[28 U.S.C. § 1915\(b\)\(2\)](#). Therefore, the remaining amount of the appellate filing fee, or \$5.00, shall be collected pursuant to this procedure.

IT IS THEREFORE ORDERED that:

1. Plaintiff is permitted leave to appeal in forma pauperis. Plaintiff has already submitted the initial partial filing fee of \$450.00.
2. Plaintiff’s institution shall collect the remaining \$5.00 in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#), quoted above, and shall forward those installments to the court.
3. The Clerk of the court is directed to send a copy of this order to the appropriate official at Plaintiff’s institution and to the Eighth Circuit Court of Appeals.

DATED this 25th day of June, 2012.

BY THE COURT:

Richard G. Kopp

Senior United States District Judge

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