

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ERIC MCGEE,

Petitioner,

v.

ROBERT HOUSTON, et al.,

Respondent.

CASE NO. 4:13CV3084

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On April 17, 2013, Petitioner filed a Petition for Writ of Habeas Corpus and a Motion for Leave to Proceed in Forma Pauperis. (Filing Nos. [1](#) and [2](#).) On May 31, 2013, the court determined that Petitioner's prisoner trust account contained an average monthly balance of \$100 or more for the six-month period immediately preceding the filing of the petition. (Filing No. [7](#).) As such, it ordered Petitioner to pay the \$5.00 filing fee because he has the financial ability to do so. (*Id.*) The court warned Petitioner that failure to pay the filing fee by June 28, 2013, would result in dismissal of his case without further notice. (*Id.*) The June 28, 2013, deadline has passed and Petitioner has not paid the filing fee. (See Docket Sheet.) Therefore, the court will dismiss this matter because Petitioner failed to comply with this court's order, and failed to prosecute this matter diligently.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice;
2. A separate judgment will be entered in accordance with this Memorandum and Order; and

3. Petitioner's Motion to Appoint Counsel (Filing No. [3](#)) is denied as moot.

DATED this 4th day of September, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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