

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROBERT BAKER,	)	4:14CV3051
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
LOU ANN NENEMAN, CITY OF OMAHA, and BRUCE HOLCOMB, M.D.,	)	
	)	
Defendants.	)	

This matter is before the court on reconsideration of Plaintiff’s Motion for Leave to Proceed in Forma Pauperis (“IFP”). (Filing No. [2](#).) On March 12, 2014, Plaintiff filed a Complaint (Filing No. [1](#)), a Motion for Leave to Proceed IFP (Filing No. [2](#)), and a copy of his trust account statement (Filing No. [3](#)). On March 26, 2014, the court ordered Plaintiff to pay an initial partial filing fee in the amount of \$98.35 based on an average account balance of \$491.76, as reflected in the trust account statement he filed with the court. (See Filing No. [6](#).)

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*. Upon further review of Plaintiff’s trust account statement (Filing No. [3](#)), the court notes that Plaintiff did not file a statement that reflects his finances for the six months preceding the filing of the Complaint. Rather, Plaintiff submitted an institutional account statement reflecting his finances in February through July of 2013.

On June 3, 2014, the clerk’s office requested an updated trust account statement from the financial department of Plaintiff’s place of incarceration, the South Dakota State Penitentiary. (See Filing No. [10](#).) The updated trust account statement reflects

that during the past six months, the average balance in Plaintiff's trust account was \$44.50. (Filing No. [11 at CM/ECF p. 2.](#)) In light of this information, the court rescinds its prior orders directing Plaintiff to pay an initial partial filing fee in the amount of \$98.35. The court finds that the initial partial filing fee is \$8.90, based on an average monthly account balance of \$44.50. Plaintiff must pay this initial partial filing fee within 30 days from the date of this Memorandum and Order. If the court does not receive payment by this deadline, this matter **will be dismissed**. Plaintiff may request an extension of time if needed.

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, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure. The clerk's office shall send a copy of this Memorandum and Order to the appropriate financial official at Plaintiff's institution. Plaintiff will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time.

IT IS THEREFORE ORDERED that:

1. The court rescinds its prior orders directing Plaintiff to pay an initial partial filing fee in the amount of \$98.35. (Filing No. [6](#) and Filing No. [8](#).)
2. Plaintiff shall pay an initial partial filing fee of \$8.90 within 30 days from the date of this Memorandum and Order, unless an enlargement of time is granted in response to a written motion. If the initial partial filing fee is not received by the specified deadline, this case **will be dismissed**.
3. After payment of the initial partial filing fee, Plaintiff's institution shall collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and shall forward those installments to the court.
4. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.
5. The clerk's office is directed to set a pro se case management deadline in this case using the following text: **September 1, 2014**: initial partial filing fee payment due.
6. Plaintiff shall keep the court informed of his current address at all times, and all parties are bound by the Federal Rules of Civil Procedure and by the court's Local Rules while this case is pending.

DATED this 28th day of July, 2014.

BY THE COURT:

*s/ John M. Gerrard*

United States District Judge

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