

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BILLIE JOE CHAPMAN,	)	
	)	
Plaintiff,	)	4:14CV3141
	)	
v.	)	
	)	
YVONNE D. SOSA-GAYTON, TIM	)	MEMORANDUM AND ORDER
BURNS, DOUGLAS COUNTY PUBLIC	)	
DEFENDERS OFFICE, and JUDGE	)	
CONIGLIA,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court on plaintiff's Motion for Leave to Proceed in Forma Pauperis ("IFP") (Filing No. [7](#)). The Court has received a certified copy of plaintiff's trust account information (Filing No. [5](#)). Plaintiff will be permitted to proceed IFP.

Pursuant to the Prison Litigation Reform Act, a prisoner plaintiff is required to pay the full amount of the Court's \$350.00 filing fee by making monthly payments to the Court, even if the prisoner is proceeding IFP. [28 U.S.C. § 1915\(b\)](#). "[T]he PLRA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." [In re Tyler, 110 F.3d at 529-30 \(8th Cir. 1997\)](#); [Jackson v. N.P. Dodge Realty Co., 173 F. Supp. 2d 951 \(D. Neb. 2001\)](#).

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, the Court finds that the initial partial filing fee is \$5.82, based on average monthly deposits in the amount of \$29.10. (See prisoner trust account statement at Filing No. [5](#).)<sup>1</sup> 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](#)

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<sup>1</sup> Plaintiff attached to his Motion for Leave to Proceed in Forma Pauperis a document entitled "Certification of Offender Account and Assets." (Filing No. [7 at CM/ECF p. 3](#).) This document is purportedly signed by an authorized officer at the Newton Correctional Facility, his place of incarceration. According to this document, "the average of the monthly *deposits* to [plaintiff's] account was \$-27.96." (*Id.* (emphasis added).) The undersigned judge fails to understand how the amount of deposits *into* an account could be for a negative amount. Thus, for the purposes of determining plaintiff's initial partial filing fee, the Court will rely solely on the prisoner account statement that was submitted directly by Newton Correctional Facility (Filing No. [5](#)).

[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. See [In re Tyler, 110 F.3d at 529-30; Jackson, 173 F. Supp. 2d at 951](#).

IT IS ORDERED:

1. Plaintiff's Motion for Leave to Proceed IFP (Filing No. [7](#)) is granted.

2. Plaintiff shall pay an initial partial filing fee of \$5.82 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 Memorandum and Order to the appropriate financial officer 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 5, 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 4th day of August, 2014.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court

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