

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIAN FRANK GUERRY,

Plaintiff,

vs.

SCOTT FRAKES, Director; BRIAN
GAGE, Warden; GUIFFRE, Case
Worker; and THOMPSON, Case
Worker;

Defendants.

8:15CV323

**MEMORANDUM
AND ORDER**

BRIAN FRANK GUERRY,

Plaintiff,

vs.

SCOTT FRAKES, in his individual
capacity; FRANK HOPKINS, in his
individual capacity; BRIAN GAGE, in
his individual capacity; et al.;

Defendants.

4:17CV3047

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Notice of Appeal. ([Filing No. 114](#), Case No. 8:15CV323; [Filing No. 69](#), Case No. 4:17CV3047.) Plaintiff was permitted to proceed in forma pauperis in this action on September 3, 2015, and he may now proceed in forma pauperis on appeal without further authorization. [Fed. R. App. P. 24\(a\)\(3\)](#).

The Prison Litigation Reform Act (“PLRA”) requires prisoner plaintiffs to pay the full amount of the court’s \$505.00 appellate filing fee by making monthly payments to the court, even if the prisoner is proceeding in forma pauperis. [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, 952 (D. Neb. 2001) (citing *In re Tyler*, 110 F.3d 528, 529–30 (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).

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 notice of appeal. *See* [28 U.S.C. § 1915\(b\)\(1\)](#). Accordingly, based on the records before the court, the initial partial filing fee is \$0.77, based on an average monthly account balance of \$3.85. (*See* [Filing No. 116](#), Case No. 8:15CV323; [Filing No. 71](#), Case No. 4:17CV3047.)

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.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed in Forma Pauperis on Appeal ([Filing No. 115](#), Case No. 8:15CV323; [Filing No. 70](#), Case No. 4:17CV3047) is granted.
2. Plaintiff shall pay an initial partial filing fee of \$0.77 within 30 days unless an enlargement of time is granted in response to a written motion.
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 and to the Eighth Circuit Court of Appeals.

Dated this 27th day of April, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge