

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

BRYAN S. BEHRENS, et al.,

Defendants.

8:08-CV-13

MEMORANDUM AND ORDER

This matter is before the Court on a notice of appeal from pro se defendant Bryan S. Behrens that the Court understands to include a request for leave to proceed in forma pauperis on appeal (filing [422](#)). Pursuant to [28 U.S.C. § 1915\(a\)\(1\) and \(2\)](#), leave to proceed in forma pauperis on appeal will be granted.

Because Behrens has filed a notice of appeal and wishes to proceed in forma pauperis, he is required, pursuant to the Prison Litigation Reform Act, to pay the full amount of the \$505.00 appellate filing fee by making monthly payments to the Court. [28 U.S.C. § 1915\(b\)](#). The Act "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 528, 529 \(8th Cir. 1997\)](#). The appellate filing fee is assessed when the Court receives the prisoner's notice of appeal. *Henderson v. Norris*, [129 F.3d 481, 485 \(8th Cir. 1997\)](#).

Pursuant to [§ 1915\(b\)\(1\)](#), a prisoner must pay an initial partial filing fee in the amount of 20 percent of the greater of the prisoner's average monthly account balance or average monthly deposits for the 6 months preceding the filing of the appeal. Accordingly, based on the records before the Court, the initial partial filing fee is \$18.97, based on average monthly deposits of \$94.83. *See* filing [428](#). In addition to the initial partial filing fee, a prisoner must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." [§ 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.

§ 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure.

Behrens is reminded that it is his responsibility to indicate to prison officials that a payment should be credited to a new *initial* filing fee—thereby authorizing the prison to deduct funds from the prisoner's trust account to continue paying that obligation as required by § 1915(b)(2). *Cf. Henderson, 129 F.3d at 484* (distinguishing between "initial payment" and "later installment payments" and stating that "the latter [are] to be calculated and remitted by prison officials pursuant to § 1915(b)(2)") When a prisoner has multiple obligations, it is not the responsibility of prison officials to decide which should be paid first. And unless the attachment to a payment indicates that it should be credited to an appellate filing fee, it is the Court's practice to apply a payment associated with a case to an existing obligation, of which Behrens has several.

In short: to make sure that his initial partial appellate filing fee is paid, Behrens should clearly ask the appropriate official at his institution to indicate, on his payment, that the payment is intended to satisfy his *appellate* filing fee for the above-captioned case.

IT IS ORDERED:

1. Behrens' request for leave to appeal in forma pauperis (filing 422) is granted.
2. Behrens shall pay an initial partial filing fee of \$18.97 by November 4, 2014, unless an enlargement of time is granted in response to a written motion.
3. The Clerk of the Court is directed to set a case management deadline of November 4, 2014.
4. After payment of the initial partial filing fee, Behrens' 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.

5. The Clerk of the Court is directed to send a copy of this order to the appropriate official at Behrens' institution and to the Eighth Circuit Court of Appeals.

Dated this 2nd day of October, 2014.

BY THE COURT:



John M. Gerrard
United States District Judge