

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

NICCOLE A. WETHERELL,

)

CASE NO. 8:09CV32

)

Petitioner,

)

v.

)

**MEMORANDUM
AND ORDER**

)

JOHN DAHM,

)

)

Respondent.

)

Petitioner has filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#) (Filing No. [1](#)), a Motion for Leave to Proceed In Forma Pauperis (IFP) (Filing No. [2](#)), and a certified copy of her trust account information (Filing No. [3](#)).

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the Motion for Leave to Proceed IFP pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#).¹ Petitioner's trust account statement shows that she had an average monthly balance of \$100 or more in her account for the six-month period immediately preceding the filing of the Petition. (Filing No. [3](#)) For this reason, the court concludes that Petitioner must be required to pay the \$5.00 filing fee because she has the financial ability to do so. See [28 U.S.C. § 1915\(a\)](#).

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed IFP (Filing No. [2](#)) is denied;
2. Petitioner is granted until March 25, 2009, to pay the \$5.00 filing fee. Petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice; and

¹The court recognizes that the provisions of [28 U.S.C. § 1915\(b\)](#) do not apply to habeas cases. See [Malave v. Hedrick, 271 F.3d 1139, 1139-40 \(8th Cir. 2001\)](#).

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: March 25, 2009: deadline for Petitioner to pay \$5.00 filing fee.

DATED this 24th day of February, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge