

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GERALD M. RISCOE,)	
et al.,)	
Plaintiffs,)	
)	
v.)	Case No. 16-2653-CM-TJJ
)	
UNITED STATES OF AMERICA FOOD)	
AND DRUG ADMINISTRATION,)	
)	
Defendant.)	

**ORDER DENYING LEAVE TO
PROCEED IN FORMA PAUPERIS ON APPEAL**

Plaintiff Gerald Riscoe has filed a notice of appeal of the Court’s April 25, 2017 Judgment (ECF No. 33) and Memorandum and Order (ECF No. 32) granting Defendant’s motion to dismiss. He has filed a motion to proceed in forma pauperis on appeal (ECF No. 37), which is presently pending before the Court.

Federal Rule of Appellate Procedure 24(a)(1) provides that a party who has not already been granted leave to proceed in forma pauperis in the district court action and who wishes to proceed in forma pauperis on appeal must file a motion in the district court. The rule also provides that the moving party “must attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party’s inability to pay or give security for fees or costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.”

The Court has reviewed Plaintiff’s motion and finds that his motion to proceed in forma pauperis on appeal must be denied. First, Plaintiff failed to provide the financial information

requested in the affidavit accompanying his motion for permission to appeal in forma pauperis. Second, Plaintiff wrote on the face of the affidavit that he concedes he has sufficient assets to pay the appeal filing fee. In his motion, he again states his family does have funds to pay the filing fee, but asks that he be permitted to proceed with his appeal without paying the fee up front. He states that if he is awarded damages, the filing fee can be deducted from the proceeds. Because Plaintiff failed to provide any financial information in his affidavit and expressly conceded that he has sufficient assets to pay the appeal filing fee, the Court concludes that Plaintiff has not shown a financial inability to pay the appeal filing fee.

IT IS THEREFORE ORDERED that Plaintiff's motion for leave to proceed in forma pauperis on appeal (ECF No. 37) is DENIED. Plaintiff shall pay the appeal filing fee **within 30** **days** of the date of this Order.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 21th day of June, 2017.



Teresa J. James
U. S. Magistrate Judge