

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRUCE TONEY,

Petitioner,

v.

Case No. 10-12102

BLAINE LAFLER,

Respondent.

**ORDER GRANTING PETITIONER'S APPLICATION TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

Pending before the court is Petitioner Bruce Toney's "Application to Proceed In Forma Pauperis on Appeal," filed on July 29, 2010. For the reasons stated below, the court will grant the application.

The standard for granting an application for leave to proceed *in forma pauperis* is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed *in forma pauperis* if it finds that an appeal is being taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a); *Foster*, 208 F. Supp. 2d at 764-65. "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although the court declined to issue a certificate of appealability, the court cannot

conclude that Petitioner's claims are frivolous. The court will therefore grant Petitioner's application to proceed on appeal *in forma pauperis*. Accordingly,

IT IS ORDERED that Petitioner's "Application to Proceed In Forma Pauperis on Appeal" [Dkt. # 11] is GRANTED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 20, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 20, 2010, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522