

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINSTON G. MORRISON,)	
)	
Petitioner,)	
)	
v.)	No. 4:09CV1961 JCH
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s document titled both “notice of appeal” and “petition for certificate of appealability.” The Clerk of Court has docketed the document as a motion for certificate of appealability. Petitioner filed a petition for writ of audita querela pursuant to 28 U.S.C. § 1651, which the Court denied on December 21, 2009. Petitions for writ of audita querela are not subject to the requirements of 28 U.S.C. § 2253. As a result, the Court will order the Clerk to recharacterize petitioner’s filing as a notice of appeal and to forward the document to the United States Court of Appeals for the Eighth Circuit as is appropriate.

Additionally, petitioner has not paid the appellate filing fee nor filed a motion to proceed in forma pauperis on appeal. The Court, however, notes that it will not allow petitioner to proceed in forma pauperis on appeal because it previously certified that

an appeal from the dismissal would not be taken in good faith. As a result, the Court will order petitioner to pay the appellate filing fee.

Accordingly,

IT IS HEREBY ORDERED that the Clerk shall recharacterize petitioner's motion for certificate of appealability [#6] as a notice of appeal, and the Clerk shall forward the document to the United States Court of Appeals for the Eighth Circuit as is appropriate.

IT IS FURTHER ORDERED that plaintiff shall, within thirty (30) days of the date of this Order, either pay to this Court the \$455 appellate filing fee or file a motion in the United States Court of Appeals for the Eighth Circuit for leave to proceed in forma pauperis.

IT IS FURTHER ORDERED that plaintiff shall file any future documents or pleadings in connection with his appeal directly with the United States Court of Appeals for the Eighth Circuit.

Dated this 13th day of January, 2010.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE