

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

EARL RICHARDSON,

Plaintiff,

:

Case No. 3:10-cv-028

-vs-

Magistrate Judge Michael R. Merz

:

DAYTON PUBLIC SCHOOLS, et al.,

Defendants.

DECISION AND ORDER ON MOTION TO CHALLENGE

This case is before the Court on Plaintiff's Motion to Challenge the Magistrate's Order and Certification of Bad Faith *in forma pauperis* Appeal (Doc. No. 36). The Court will take this as a motion for reconsideration of the prior Order.

In the present document, Mr. Richardson insists that he is indigent. His motion says that he has attached a new application to proceed without prepayment of fees, an affidavit on his current indigent status, and a bank statement. None of those documents is attached.

Having permitted him to proceed *in forma pauperis* in this Court, the Magistrate Judge does not doubt that imposing the \$455 filing fee on Plaintiff would create a hardship as that term is defined in the case law interpreting 28 U.S.C. § 1915. Plaintiff has failed to demonstrate, however, that he seeks to appeal any issue which is not objectively frivolous. He has said nothing in the instant Motion which even speaks to the question of what nonfrivolous issues he would raise on appeal.

Accordingly, the Motion is denied.

If the district court denies the individual leave to proceed in forma pauperis on appeal, the

party may file, within thirty days after service of the district court's decision as prescribed for by Fed. R.App. P. 24(a)(4), a motion with the Court of Appeals for leave to proceed as a pauper on appeal. The party's motion must include a copy of the affidavit filed in the district court and the district court's statement as to its reasons for denying pauper status on appeal. See Fed. R.App. P. 24(a)(5). *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), holding *Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997), superseded in part by 1998 amendments to Fed. R.App. P. 24. Any such motion must be filed with the Court of Appeals not later than July 8, 2010. June 18, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge