

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TITUS HENDERSON,

Plaintiff,

v.

RICK RAEMISCH, PETER HUIBREGTSE,
GARY BOUGHTON, ELLEN RAY,
TOM GOZINSKI, WELCOME ROSE,
AMY SMITH, HELLEN KENNEBECK,
KATHRYN ANDERSON, LARRY PRIMMER,
JANA JUERGENS, MONICA HORNER,
TRISHA LANSING, NANCY SALMON,
C. BEERKIRCHER, THOMAS TAYLOR,
DAVID GARDNER, LT. BOISEN, BRIAN KOOL,
TIM HAINES, CRAIG TOM, LT. HANFIELD,
JOSH BROWN, H. BROWN, W. BROWN,
SGT. FURER, CO NEIS, SGT. CARPENTER,
SGT. BOARDMAN, SGT. BLOYER,
COII JONES, COII JOHNSON, CO HULCE,
COII KARNOPP, R. STARKEY,
SGT. WALLACE, COII ECKT, COII EWING,
D. ESSER, M. SCULLION, JEROMEY CAYA,
JENNIFER SICKINGER, JOAN WATERMAN,
WENDY THOMPSON, SGT. TREFT,
SGT. COOK and JOHN DOES,

Defendants.

ORDER

09-cv-170-bbc

In a July 16, 2012 order, I denied plaintiff's request for leave to proceed in forma pauperis on appeal because I certified that his appeal was not taken in good faith. I concluded that there was no substantial ground for a difference of opinion on the question whether the

case should have been dismissed for plaintiff's repeated failure to satisfy Rules 8 and 20. Now plaintiff has filed a notice of appeal of the July 16, 2012 order. Because plaintiff has not paid the \$455 filing fee for filing this appeal, I will construe his notice of appeal as a request to proceed in forma pauperis on appeal.

As stated in the July 16 order, a district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence; the appeal is taken in bad faith; or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff's request for leave to proceed in forma pauperis on this appeal will be denied, because I am certifying that this appeal is also not taken in good faith because there was no substantial ground for a difference of opinion on the question whether I was correct in certifying his appeal was not taken in good faith.

Because I am certifying plaintiff's most recent August 3, 2012 appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Plaintiff is reminded that under Fed. R. App. P. 24, he has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. Plaintiff must include with his motion an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order,

the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the full \$455 filing fee before it considers his appeal further. If he does not pay the fees within the deadline set, it is possible that the court of appeals will dismiss the appeal.

Finally, plaintiff has also filed a motion for appointment of counsel on appeal. Plaintiff's motion is not properly raised in this court. If he wishes to be appointed counsel on appeal, he will have to make his request directly to the Court of Appeals for the Seventh Circuit.

ORDER

IT IS ORDERED that

1. Plaintiff Titus Henderson's motion for appointment of counsel on appeal, dkt. #46, is DENIED without prejudice to his refileing it with the Court of Appeals.

2. Plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #45, is DENIED. I certify that plaintiff's appeal is not taken in good faith. The clerk of court is directed to insure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial records.

Entered this 20th day of August, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge