

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

LONNIE L. JACKSON,

Plaintiff,

v.

JASON SMITH, JEFFREY JABER,
JON HIBBARD, LORI MEITZEN,
TROY EHNERT, RANDY J. SPRANGERS,
HANS KUSTER, WENDY CARIVOU
and DOUG DEMOTTS,

Defendants.

ORDER

10-cv-212-bbc

On March 25, 2011, I dismissed this case without prejudice for plaintiff Lonnie Jackson's failure to exhaust his administrative remedies. Plaintiff has filed a notice of appeal. Because plaintiff has not paid the \$455 fee for filing an appeal, I construe his notice as a request for leave to proceed in forma pauperis on appeal.

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 appeal will

be denied, because I am certifying that his appeal is not taken in good faith.

I held an evidentiary hearing on the issue of whether plaintiff had exhausted his administrative remedies. I found that not only did plaintiff fail to exhaust his administrative remedies, but that he created a document after the fact to save his case from dismissal for failure to exhaust. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's 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. Under Fed. R. App. P. 24, plaintiff 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. With his motion, he must include 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 plaintiff does not file a motion requesting review of this order, the court of appeals might not address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff does not pay the fee within the deadline set, it is possible that the court of appeals

will dismiss the appeal and order the court to arrange for collection of the fee from plaintiff's prison account.

ORDER

IT IS ORDERED that plaintiff Lonnie Jackson's request for leave to proceed in forma pauperis on appeal, dkt. #46 is DENIED. I certify that his 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 5th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge