

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

BRENTFORD TAYLOR,

Petitioner,

ORDER

v.

02-C-0548-C

PHYILLIS J. DUBE, in her official and individual capacity; JON E. LITSCHER, in his official and individual capacity; BYRON BARTOW, in his official and individual capacity; MARIO CANZIANI, in his official and individual capacity; KELLY ZAREMBR, in her official and individual capacity; MICHELLE COOPER, in her official and individual capacity; DAM SMITHBACK, in his official and individual capacity; and SARAH CORCORAN in her official and individual capacity,

Respondents.

Petitioner has filed a notice of appeal from a memorandum dated December 9, 2002, in which I advised petitioner that because his case is on appeal, this court lacks jurisdiction to consider his request for leave to file an amended complaint. Because petitioner is not paying the \$105 fee for filing his notice of appeal, I assume he wishes to proceed on appeal

in forma pauperis. This request will be denied, because I must certify that his appeal is not taken in good faith.

The memorandum petitioner wishes to challenge on appeal is not an appealable order. Even if it was, there is no legally meritorious argument that can be made on appeal that petitioner is entitled to amend his complaint in the district court while the court of appeals decides whether this court's dismissal of petitioner's original complaint was proper. Because petitioner's second appeal is legally frivolous, I must certify that it is not taken in good faith. This means that petitioner's request for leave to proceed in forma pauperis on appeal must be denied and that plaintiff must pay the \$105 fee for filing the appeal immediately. He cannot take advantage of the partial payment provision of 28 U.S.C. § 1915.

ORDER

IT IS ORDERED that petitioner's motion for leave to proceed in forma pauperis on appeal from the memorandum entered in this case on December 9, 2002, is DENIED. I certify that his appeal is not taken in good faith.

Further, IT IS ORDERED that petitioner is to pay the \$105 fee for filing his appeal immediately. If petitioner fails to pay the fee and has the money to do so, it will be understood that he is giving up his ability to proceed in forma pauperis in any other proceeding or on any additional appeals until the fee is paid in full. If petitioner does not

presently have the full \$105 in his prison account, prison officials may apply all of whatever portion of the fee petitioner has in his account to his obligation in this case and take whatever additional funds may be deposited in his account in the future as necessary to pay the balance of the fee.

Entered this 19th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge