IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT L. COLLINS-BEY,

Petitioner, ORDER

v. 05-C-453-C

MATTHEW J. FRANK, RICHARD SCHNEITER,
PETER HUIBREGTSE, GARY BOUGHTON,
KELLY TRUMM, TODD BRUDOS,
REED TREFZ and CHAD LOMAN,

Respondents.

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In an order entered in this case on September 2, 2005, I screened petitioner's complaint pursuant to 28 U.S.C. § 1915(e)(2) and denied him leave to proceed in forma pauperis on all of his claims after finding them to be legally meritless. Subsequently, petitioner filed a timely motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment of dismissal. I denied that motion on September 26, 2005. Now petitioner has filed a notice of appeal. The notice is not accompanied by the $255 fee required for filing an appeal. Therefore, I construe petitioner's notice of appeal to include a motion for leave to proceed on appeal in forma pauperis.

In determining whether petitioner may appeal in forma pauperis, I must consider

whether he has three strikes under 28 U.S.C. § 1915(g) and, if not, whether he is indigent and whether his appeal is taken in good faith. Petitioner does not have three strikes and I am aware from the trust fund account statement he submitted just three months ago that he is indigent. Nevertheless, petitioner cannot proceed in forma pauperis on appeal because I must certify that his appeal is not taken in good faith.

Petitioner intends to raise on appeal the claims he raised in his complaint. The Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a petitioner is appealing the same claims the district court found to be without legal merit in his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000); Hains v. Washington, 131 F.3d 1248 (1997). Because petitioner is attempting to raise on appeal the same legally meritless claims he raised in his complaint in this court, I must certify his appeal as not being taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, petitioner cannot proceed with his appeal without prepaying the $255 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner 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. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to

pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from petitioner's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 21st day of October, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge