

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>RICARDO MARTIZE ADKINS,</b>	)	
	)	
	)	
<b>Petitioner,</b>	)	<b>CIVIL ACTION</b>
	)	
<b>v.</b>	)	<b>No. 18-3153-KHV</b>
	)	
<b>WARDEN DAN SCHNURR,</b>	)	
	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**MEMORANDUM AND ORDER**

On October 31, 2019, the Court overruled petitioner’s pro se Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Doc. #1) filed June 26, 2018 and denied a certificate of appealability. Memorandum And Order (Doc. #33). On December 19, 2019, he filed a notice of appeal. Notice Of Appeal (Doc. #35). This matter is before the Court on petitioner’s Application To Proceed Without Prepayment Of Fees And Affidavit By A Prisoner (Doc. #36) filed December 19, 2019.

Petitioner seeks to appeal the Court’s Memorandum And Order (Doc. #33) without prepayment of costs and fees. To appeal in forma pauperis, under Federal Rule of Appellate Procedure 24(a)(1), petitioner must file a motion with the Court which includes an affidavit that “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party’s inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1); Pledger v. Russell, No. 16-2770-JAR, 2017 WL 5187827, at \*1 (D. Kan. Feb. 9, 2017). Form 4 requires a party to

give detailed financial information.<sup>1</sup> Likewise, under 28 U.S.C. § 1915(a)(1), a party seeking leave to proceed without prepayment of fees must submit an affidavit which states “the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” See Grigsby v. Baltazar, No. 18-3138-JTM, 2018 WL 4352016, at \*1 (D. Kan. Sept. 12, 2018); see also McIntosh v. U.S. Parole Comm’n, 115 F.3d 809, 812 (10th Cir. 1997) (IFP request on appeal requires demonstration of “existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal”).<sup>2</sup>

Here, petitioner’s motion does not satisfy the requirements of Rule 24(a)(1) and 28 U.S.C. § 1915(a)(1). Although he states that he is financially unable to pay and includes his inmate account statement for the previous six months, he does not provide an affidavit which contains the level of detail Form 4 requires and does not recite the issues he intends to raise in his appeal. It appears that petitioner has followed the District of Kansas’s procedure for requesting in forma pauperis status instead of the procedure set forth in Federal Rule of Appellate Procedure 24(a)(1).<sup>3</sup>

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<sup>1</sup> Form 4 of the Appendix of Forms is available on the United States Courts website at <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/appellate-rules-forms>.

<sup>2</sup> In addition, if the district court permitted petitioner to proceed in forma pauperis, he may proceed in forma pauperis on appeal without filing a subsequent request. Fed. R. App. P. 24(a)(3). Here, the Honorable Sam A. Crow did not permit petitioner to proceed in forma pauperis. See Order (Doc. #12) filed January 29, 2019.

<sup>3</sup> Petitioner’s motion is in the format prescribed by D. Kan. R. 9.1(a) for a prisoner who seeks to file in forma pauperis a petition (i.e., under 28 U.S.C. §§ 2241 or 2254), a motion to vacate (i.e., under 28 U.S.C. § 2255) or a complaint (i.e., under 42 U.S.C. § 1983). See D. Kan. R. 9.1(a), (g). This is not the correct form to file when seeking *to appeal* in forma pauperis.

The Court therefore overrules petitioner's motion without prejudice to filing a motion within the next 30 days that contains the appropriate information.

**IT IS THEREFORE ORDERED** that petitioner's Application To Proceed Without Prepayment Of Fees And Affidavit By A Prisoner (Doc. #36) filed December 19, 2019 is **OVERRULED without prejudice to refiling within the next 30 days in compliance with Fed. R. App. P. 24(a)(1) and 28 U.S.C. § 1915(a)(1).**

**IT IS FURTHER ORDERED** that the clerk's office shall mail a copy of Form 4 of the Appendix of Forms to petitioner with a copy of this order.

Dated this 5th day of February, 2020 at Kansas City, Kansas.

s/ Kathryn H. Vratil  
KATHRYN H. VRATIL  
United States District Judge