

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RANDALL B. HOFLAND,)
)
 Plaintiff,)
)
 v.) 1:12-mc-00092-JAW
)
 JOSEPH PONTE,)
)
 Defendant.)

**ORDER OVERRULING OBJECTION TO ORDER DENYING MOTION TO
PROCEED
IN FORMA PAUPERIS ON APPEAL**

On September 18, 2012, the Court denied Randall B. Hofland’s motion to proceed in forma pauperis on appeal. *Order Denying Motion to Proceed In Forma Pauperis on Appeal* (ECF No. 31) (*Order*). On October 1, 2012, Mr. Hofland filed an objection to the Order. *Objection* (ECF No. 34). In the objection, Mr. Hofland says that the Court Order of September 18, 2012 “constitutes evidence of the ongoing mail fraud and wire fraud plus obstructions of justice by Judge Woodcock and his cohorts.” *Id.* at 1. He observes that he filed a “standing ‘affidavit’ . . . previously in this matter . . . and refileing such a document would merely be surplusage and redundant plus delay proceedings, particularly give[n] Prison practices plus the obvious fact that the Court of Appeals has its own practices.” *Id.* He asserts both this Judge and Magistrate Judge Kravchuk engaged in “crimes.” *Id.*

A “relentless and frivolous” filer, Mr. Hofland is operating under a filing restriction in this District. *Hofland v. LaHaye*, 1:09-cv-00172-JAW, *Order on Recommended Decisions* at 9-12 (ECF No. 103) (D. Me. Jan. 18, 2012) (*LeHaye*

Order). Mr. Hofland's original motion of May 4, 2012 to proceed in forma pauperis, however, slipped through the cracks. *Mot. to Appoint Counsel and Mot. for Leave to Proceed In Forma Pauperis* (ECF No. 2); *Order* (ECF No. 3). In her May 9, 2012, *Order*, after noting his filing restriction, the Magistrate Judge observed that his submission did not comply with the January 18, 2012 filing restriction order of this Court in *LeHaye* and furthermore he would be required to address the language in 28 U.S.C. § 1915(g) regarding three or more prior actions or appeals found to be frivolous. *Order* (ECF No. 3). She denied the motion for leave to proceed in forma pauperis. *Id.* at 2.

Mr. Hofland earnestly set about attacking the preliminary question of his in forma pauperis status. On May 17, 2012, he filed a motion for leave to file and another motion for leave to proceed in forma pauperis. *Mot. for Leave to File Mot. for Leave to Proceed in Forma Pauperis* (ECF No. 4). On May 22, 2012, the Magistrate Judge denied the motion for leave to proceed in forma pauperis on the assumption that the Court would soon screen the complaint on its merits. *Order Denying Mot. for Leave to Proceed In Forma Pauperis* (ECF No. 6). He then filed yet another in forma pauperis petition on May 23, 2012, an objection to the May 22, 2012 *Order* denying his original in forma pauperis petition on May 31, 2012, a fourth in forma pauperis petition on June 4, 2012, all of which resulted in an *Order* by the Magistrate Judge on June 5, 2012, terminating the multiple motions for leave to proceed in forma pauperis and issuing a Recommended Decision by the Magistrate Judge on June 8, 2012, recommending that the motion for in forma

pauperis status be denied. *App. to Proceed in Dist. Court Without Prepaying Fees or Costs* (ECF No. 8); *Objection* (ECF No. 9); *Order* (ECF No. 10); *Recommended Decision* at 6 (ECF No. 15) (*Recommended Decision*). On August 27, 2012, the Court affirmed the Recommended Decision and denied the motion for leave to proceed in forma pauperis. *Order Affirming the Recommended Decision of the Magistrate Judge* (ECF No. 28) (*Order Affirming*).

In her June 8, 2012 Recommended Decision, the Magistrate Judge noted that Mr. Hofland's lawsuit faced "three hurdles" before it could "even be docketed as an open civil case": (1) he is operating under filing restrictions; (2) he did not pay the filing fee or file a proper in forma pauperis petition; and, (3) his case would have to survive screening under 28 U.S.C. § 1915(g). *Recommended Decision* at 3. The Magistrate Judge made it clear, however, that she was resting her decision solely on the provisions of 28 U.S.C. § 1915(g), which prohibit a prisoner from proceeding with a civil action if he has on three or more occasions filed an action or appeal deemed frivolous. *Id.* ("[M]y current recommendation rests solely on the provisions of 28 U.S.C. § 1915(g)"). This Court affirmed the Recommended Decision on that basis. *Order Affirming* at 1-2.

As the Court observed in its September 18, 2012 Order, Mr. Hofland "has a knack for creating procedural conundrums." *Order* at 1-2. In the unique circumstance of an in forma pauperis petition, the law allows a plaintiff to appeal the denial of a petition for leave to proceed in forma pauperis, *Roberts v. United States*, 339 U.S. 844, 845 (1950), and therefore Mr. Hofland managed to appeal to

the First Circuit Court of Appeals whether he should be allowed to proceed in forma pauperis on a case that has not yet been filed with the Court. *Notice of Appeal* (ECF No. 29). Typically, the filing of a notice of appeal divests the trial court of jurisdiction; however, Federal Rule of Appellate Procedure 24(a)(1) states that “a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court.” FED. R. APP. P. 24(a)(1). This Court noted in its September 18, 2012 Order that this provision creates some tail chasing when the appeal itself involves the denial of a motion to proceed in forma pauperis. *Id.* at 2.

In any event, there is no provision for an objection to a district court order denying a motion to proceed in forma pauperis on appeal. Instead, as the Court explained in its September 18, 2012 Order, if Mr. Hofland wished to challenge the denial of his motion to proceed in forma pauperis, Federal Appellate Rule 24(4) and (5) require him to file in the court of appeals within thirty days of service of notice of the district court decision an appropriate motion to proceed in forma pauperis. *Id.* (citing FED. R. APP. P. 24(4), (5)). Rather than proceed to the First Circuit Court of Appeals, Mr. Hofland simply objected to the Court’s Order dated September 18, 2012 the same way he would object to a magistrate judge’s recommended decision.

As Mr. Hofland is acting pro se in his petition for leave to proceed in forma pauperis, although it is questionable whether it applies, the Court will view his objection as a motion for reconsideration under Local Rule 7(g). D. ME. LOC. R. 7(g). In his Objection, Mr. Hofland stresses that he filed a “standing’ affidavit” when he filed his original motion to proceed in forma pauperis on May 23, 2012. *Objection at*

1. However in filing a motion to proceed in forma pauperis on appeal on September 17, 2012, Mr. Hofland was proceeding with a new motion, not with his May 23, 2012 motion, and he should have filed a new affidavit in support of his September 17, 2012 motion in accordance with Federal Rule of Appellate Procedure 24(a)(1). FED. R. APP. P. 24(a)(1) (“[A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit”) (emphasis supplied). Mr. Hofland attached no such affidavit to his motion to proceed in forma pauperis on appeal and did not ask the Court to consider his earlier-filed affidavit in his new motion; he thereby violated the Rule. The May 23, 2012 affidavit does not suffice for the September 17, 2012 motion.

More to the point, Mr. Hofland ignores the second part of this Court’s September 18, 2012 Order, which expressly stated that he has “failed to demonstrate facts that would entitle him to in forma pauperis status on appeal.” *Order* at 2-3. The basis for the Magistrate Judge’s Recommended Decision against his in forma pauperis petition and this Court’s affirmance of the Recommended Decision was that by filing his newest lawsuit, Mr. Hofland violated 28 U.S.C. § 1915(g), which expressly prohibits a prisoner who “has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). As the Court itemized in its Order on Recommended Decisions in *LeHaye, LeHaye*

Order at 10-12, and the Magistrate Judge reiterated in the Recommended Decision in this case, *Recommended Decision* at 4-5, Mr. Hofland has filed countless cases with this Court, all frivolous, and his proposed Complaint does not allege serious physical harm nor is the relief he is seeking associated with alleviating a specific threat of imminent serious physical harm. Mr. Hofland is not entitled to in forma pauperis status in this lawsuit under 28 U.S.C. § 1915(g).

The Court OVERRULES Randall B. Hofland's Objection (ECF No. 34).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF U.S. DISTRICT JUDGE

Dated this 9th day of October, 2012

Plaintiff

RANDALL B HOFLAND

represented by **RANDALL B HOFLAND**
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MAINE STATE PRISON
807 CUSHING RD
WARREN, ME 04864
PRO SE

V.

Defendant

JOSEPH PONTE

*Commissioner, Maine Department of
Corrections*

Defendant

PATRICIA BARNHART

Warden, Maine State Prison

V.

Notice Only Party

**MAINE ATTORNEY GENERAL -
PRISONER CASES**