

DIVISION OF ST. THOMAS AND ST. JOHN

Respondent.

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) **CASE NO. ST-12-SM-505**
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Pending before the Court is Petitioner's motion to proceed in forma pauperis. For the following reasons, Petitioner's motion will be denied without prejudice.

On September 18, 2013, the Magistrate issued a judgment in favor of Respondent and against Petitioner in the amount of ten thousand dollars plus one hundred fifty dollars in court costs. Petitioner filed a notice of appeal with the Court on September 25, 2013, and the Clerk of Court issued a letter to Petitioner describing the deadlines for a transcript request and the briefing schedule for the review on September 30, 2013. The Clerk of Court then issued a deficiency notice on February 24, 2014, indicating that Petitioner had failed to pay for his petition for review,¹ failed to request a transcript, failed to file a brief within the time set by the rules, and failed to follow the procedural rules to move this review forward. On March 6, 2013, Petitioner filed his motion to proceed in forma pauperis.

¹ Petitioner submitted payment for his petition on March 6, 2014.

ANALYSIS

4 V.I.C. § 513 establishes that:

(a) Any court in the Virgin Islands may authorize the commencement, prosecution, or defense of any action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs, or security therefor, by a citizen of the United States who makes affidavit that he is unable to pay the fees and costs or to give security therefor. The affidavit shall state the nature of the action, defense, or appeal and affiant's belief that he is entitled to redress. An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) In any proceeding in forma pauperis in the Superior Court, the fees of the reporter for transcripts shall be paid by the government of the Virgin Islands under the same circumstances as the fees of the reporter of the district court are paid by the United States in like proceedings under section 753 of Title 28 of the United States Code.

4 V.I.C. § 513 adopts, with slight modifications, the provisions of 28 U.S.C.A. § 1915, which provides that:

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

Absent from 4 V.I.C. § 513 is the provision in 28 U.S.C.A. § 1915 requiring the movant to include “a statement of all assets [he or she] possesses.” Notwithstanding, courts should examine an application to proceed in forma pauperis under 4 V.I.C. § 513 with the same level of scrutiny as they examine an application under 28 U.S.C.A. § 1915. As the Third Circuit has stated, “courts must be rigorous in their examination of applications [to proceed] in forma pauperis ... to ensure that the treasury is not unduly imposed upon.”²

² *Walker v. People Exp. Airlines, Inc.*, 886 F.2d 598, 601 (3d. Cir. 1989).

Accordingly, it follows that, while Petitioner may not be required to include a statement of all assets he possesses, he must submit an affidavit along with his motion that "bears particularized information with regard to [his] financial status."³ In addition, Petitioner's affidavit must "state the nature of the ... appeal and [his] belief that [he] is entitled to redress" so that the Court may evaluate whether the appeal is meritorious or frivolous.

Because Petitioner's submission (1) is not notarized or sworn under the penalty of perjury,⁴ (2) does not provide particular information concerning his financial status; and (3) does not state the nature of his appeal and why he believes that he is entitled to redress, the Court will deny Petitioner's motion without prejudice.⁵ Petitioner shall have until June 13, 2014, to amend his motion to proceed in forma pauperis, failing which the Court will dismiss his petition with prejudice.

An Order consistent with this Opinion shall follow.

Dated: May 30, 2014

ATTEST: Estrella George
Acting Clerk of Court

by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

³ *Id.*, at 602. See also *Edinburgh v. United States*, CV 2010-125, 2011 WL 1343338 (D.V.I. Apr. 8, 2011) ("To proceed in forma pauperis, a petitioner must be financially eligible before the Court assesses the merits of the underlying [claim]").

⁴ See, e.g., *United States v. Browne*, CRIM. 2007-61, 2008 WL 3379176 (D.V.I. Aug. 8, 2008) ("[B]ecause an affidavit was not notarized and did not subject the affiant to penalties for perjury, it 'was not within the range of evidence that the ... court could consider.'" (quoting *DeBruyne v. Equitable Life Assurance Soc.*, 920 F.2d 457, 471 (7th Cir. 1990))).

⁵ The decision whether to grant or deny in forma pauperis status rests within the discretion of the court. See *Jones v. Zimmerman*, 752 F.2d 76, 78 (3d Cir. 1985).