

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT MALEK,

Plaintiff,

v.

NEW YORK UNIFIED COURT SYSTEM, *et al.*,

Defendants.

ORDER

22-cv-5416 (HG) (RER)

HECTOR GONZALEZ, United States District Judge:

Pro se Plaintiff Robert Malek commenced five separate actions between November 2021 and December 2022.¹ The Court consolidated and dismissed those actions by Memorandum and Order dated March 9, 2023. *See Malek v. N.Y. Unified Ct. Sys.*, No. 22-cv-5416, 2023 WL 2429528 (E.D.N.Y. Mar. 9, 2023); ECF No. 211. Plaintiff filed a Notice of Appeal on April 6, 2023. ECF No. 215. For the reasons that follow, Plaintiff's corrected motion to proceed *in forma pauperis* is denied.

Plaintiff originally submitted, via the Eastern District of New York's Box.com portal, an incomplete IFP application attached to a cover letter containing offensive symbols and language. He has since submitted corrected documents via the Box.com portal. Those documents no longer contain offensive symbols and language; however, they do contain the full name of his minor child. Pursuant to Federal Rule of Civil Procedure 5.2, all names of minor children should be redacted. Therefore, while the Court accepts Plaintiff's filings, it will restrict access to the documents. If Plaintiff wishes to remove the restriction on his filings, he may file a

¹ *Malek v. N.Y. State Unified Ct. Sys., et al.*, No. 22-cv-5416; *Malek v. N.Y. State Unified Ct. Sys., et al.*, No. 22-cv-6515; *Malek v. James*, No. 22-cv-6538; *Malek v. N.Y. State Unified Ct. Sys., et al.*, No. 22-cv-6775; *Malek v. Ingoglia*, No. 22-cv-7815.

second corrected version redacting his minor child's name and referring to the child by their initials.

While Plaintiff's corrected version no longer contains offensive symbols and language, they contain the same deficiencies the Court noted in its previous order. *See* ECF No. 216. Rule 3(e) of the Federal Rules of Appellate Procedure requires that the appellant pay the district court all required fees upon the filing of a notice of appeal. Fed.R.App.P. 3(e). Rule 24(a)(1) of the Federal Rules of Appellate Procedure provides that a party who wishes to proceed *in forma pauperis* on appeal must file a motion in the district court and must attach 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). Form 4 requires the filer to affirm under the penalty of perjury that he cannot prepay the docket fees and to provide the source and amount of his income and a list of his assets, debts, dependents, and expenses. The district court may deny *in forma pauperis* status for an appeal if it finds that the appeal is not taken in good faith and the court articulates such findings in writing. 28 U.S.C. § 1915(a)(3).

Plaintiff submitted an IFP application that asserts, under penalty of perjury, "N/A" to all of the questions related to his income, assets, expenses, dependents, and obligations. These assertions do not establish Plaintiff's inability to pay the filing fee. Plaintiff attaches a cover letter that asserts that the filing fee "is not applicable" because, Plaintiff claims, he previously submitted a money order for a filing fee in one of his cases which was not properly credited.²

² Plaintiff asserts that he was informed by the Second Circuit that the money order was returned to him, but he claims that he did not receive it. Notably, Plaintiff has refused to provide his current mailing address.

In any case, the Court finds that an appeal of this Court’s March 9, 2023 Order would be frivolous and lacking in good faith. Therefore, Plaintiff’s motion for leave to proceed *in forma pauperis* on appeal is denied, and the Court certifies that the appeal is not taken in good faith pursuant to 28 U.S.C. § 1915 (a)(3). See *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). If Plaintiff wishes, he may move for IFP status in the Second Circuit or pay the filing fee.

SO ORDERED.

/s/ Hector Gonzalez
HECTOR GONZALEZ
United States District Judge

Dated: Brooklyn, New York
April 18, 2023