

NO: 19-5265

SUPREME COURT OF THE UNITED STATES

BENJAMIN E. SCHREIBER—PETITIONER

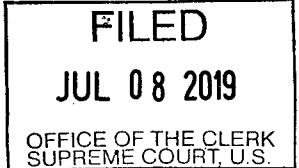
-VS-

Dr. STEPHEN E. SPARKS, et al.—RESPONDENTS

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MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS



The above Petitioner requests leave to file his pleadings and to proceed "*IN FORMAL PAUPERIS*".

Petitioner has been previously granted leave to proceed "*IN FORMAL PAUPERIS*" in the following Courts:

United States District Court for the Southern District of Iowa [Des Moines, Ia.] and the United States Court of Appeals for the Eighth Circuit [St. Louis, Mo.]. See the attached documents.

Petitioner's Affidavit and/or Declaration is attached herein.

Petitioner was Appointed Counsel during District Court Proceedings and a copy of the Appointment of counsel is attached hereto.

DATE: 8th day of July, 2019.


(SIGNATURE OF DECLARANT)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, BENJAMIN E. SCHRFIBER, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>144.00</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>00</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>ALLOWANCE</u>	\$ <u>50</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>50</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ --0--	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ --0--	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ --0--	\$ N/A
Life	\$ --0--	\$ N/A
Health	\$ --0--	\$ N/A
Motor Vehicle	\$ --0--	\$ N/A
Other: _____	\$ --0--	\$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>NONE</u>	\$ --0--	\$ N/A
Installment payments		
Motor Vehicle	\$ --0--	\$ N/A
Credit card(s)	\$ --0--	\$ N/A
Department store(s)	\$ --0--	\$ N/A
Other: <u>NONE</u>	\$ --0--	\$ N/A
Alimony, maintenance, and support paid to others	\$ --0--	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ --0--	\$ N/A
Other (specify): <u>NONE</u>	\$ --0--	\$ N/A
Total monthly expenses:	\$ --0--	\$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A IN PRISON	_____	_____	\$ --0--
	_____	_____	\$ _____
	_____	_____	\$ _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	_____	_____	\$ --0--
	_____	_____	\$ _____
	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$ --0--
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A	_____	\$ --0--	\$ N/A
	_____	\$ _____	\$ _____
	_____	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A --0--

Other real estate
Value --0--

Motor Vehicle #1
Year, make & model N/A NO CARS
Value --0--

Motor Vehicle #2
Year, make & model N/A-NO CARS
Value --0--

Other assets
Description NONE N/A
Value --0--

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>NONE</u> <u>N/A</u>	\$ <u>--0--</u>	\$ <u>N/A --0--</u>
	\$ _____	\$ _____
	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>NONE</u>	_____	_____
	_____	_____
	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>--0--</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>--0--</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>--0--</u>	\$ <u>N/A</u>
Food	\$ <u>--0--</u>	\$ <u>N/A</u>
Clothing	\$ <u>--0--</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>--0--</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>--0--</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 month?

[] Yes [XX] NO If yes, describe on attached sheet.

10. Have you paid-or will you be paying-an attorney any money for services in connection with this case, including the completion of this form? []YES [XX]NO

If yes, how much?_____

If yes, state the attorney's name, address, and phone number:

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? [] YES [XX] NO

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have attached a summary of my inmate account for the last six[6] months and it will show that I do not make enough to pay the costs of this case and that I am a prisoner of the State of Iowa. Also, my "ALLOWANCE" is based on appox. \$100.°° a month minus 20% State resestitution, and two(2) 20% Federal filing fees.

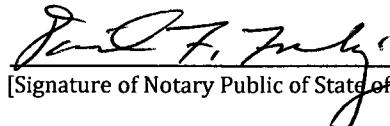
I declare under penalty of perjury that the foregoing is true and correct.



[Signature of Declarant]

Scribed and sworn to before me on this 18 th day of June, 2019.

SEAL



[Signature of Notary Public of State of Iowa]

11-6-2021

CC:BES/FILE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

BENJAMIN E. SCHREIBER,

Plaintiff,

v.

NICK LUDWICK and STEPHEN SPARKS,

Defendants.

4:17-cv-00043-RP-CFB

**ORDER GRANTING
PLAINTIFF LEAVE TO APPEAL
IN FORMA PAUPERIS**

The Court of Appeals for the Eighth Circuit has remanded this case for the limited purpose of determining Plaintiff's in forma pauperis status and assessing the appellate filing fees pursuant to 28 U.S.C. § 1915.

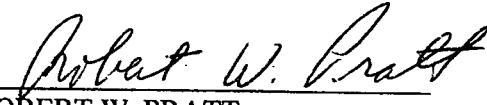
Plaintiff was allowed to proceed in forma pauperis by this Court in its Initial Review Order. ECF No. 5. Under Rule 24(a) of the Federal Rules of Appellate Procedure, a party who has been granted permission to proceed in forma pauperis in district court may continue to proceed in that status on appeal unless the court certifies that the appeal is not taken in good faith. Under 28 U.S.C. § 1915(a) “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” “Good faith” in these provisions means not only the absence of improper motive, but “presentation of any issue that is not plainly frivolous.” *Ellis v. United States*, 356 U.S. 674 (1958) (1915(a)); *Lucien v. Roegner*, 682 F.2d. 625, 626 (7th Cir. 1982) (Fed. R. App. P. 24(a)). The Court finds that Plaintiff may continue to proceed in this status.

Schreiber filed his notice of appeal on May 17, 2018, and has not provided a certified copy of his prison account or any updated financial information or request to appeal in forma pauperis. **Based on the limited information the Court has before it, the Court assesses an**

initial partial filing fee of \$35.00. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (“failure to file the prison account information [within 30 days of notice of appeal] will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner’s finances.”). 28 U.S.C. §1915(b). Plaintiff remains responsible for the remainder of the \$505.00 appellate fees. *See* 28 U.S.C. §§ 1913, 1917. The fees owed shall be paid to the Clerk of Court from Schreiber’s account in accordance with 28 U.S.C. § 1915(b) as funds in his account become available. A notice of this obligation shall be sent to the institution’s cashier, Schreiber, and the Attorney General.

IT IS SO ORDERED.

Dated this 15th day of June, 2018.


ROBERT W. PRATT
U.S. DISTRICT JUDGE