

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

BENTON COLVIN, et al.,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-00,582
	:	
JAUMEAL JAMES DICKERSON a/k/a	:	
JAMES DICKERSON,	:	
Defendant	:	

**OPINION**  
**Issued Pursuant to Pa. R.A.P. 1925(a)**

The plaintiff, Benton Colvin, has appealed this court's order filed 23 April 1999, which denied his Petition to Proceed in forma Pauperis. This opinion explains the reason for that denial.

The plaintiff filed his petition along with a praecipe for writ of summons.

Rule 240(g) of the Rules of Civil Procedure states:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Courts are given this authority so they can protect the judicial system from being overwhelmed by meritless in forma pauperis complaints. See Neitzke v. Williams, 490 U.S. 319, 326, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1990). See also Explanatory Comment to Rule 240(g).

This court cannot determine whether the plaintiff's cause of action is frivolous because he has filed only a praecipe for a writ of summons. Deprived of the ability to make an initial determination of the complaint's merit and dismiss it if appropriate,

this court has declined to grant the petition to proceed in forma pauperis. If plaintiffs are able to avert Rule 240(g) by filing a writ of summons rather than a complaint, the rule would be rendered meaningless.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk  
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