VI. CONCLUSION

We determine that an arbitration order which directs the parties to arbitrate their dispute and stays the underlying judicial action is a final, appealable order in a special proceeding under the second category of § 25-1902. We determine that § 25-2602.01(f)(4), which precludes provisions to arbitrate future controversies in insurance contracts, is not preempted by the FAA. Under the McCarran-Ferguson Act, § 25-2602.01(f)(4) regulates the business of insurance and reverse preempts the FAA. But § 25-2602.01(f)(4) is preempted by the FCIA and its implementing regulations, which require arbitration. The McCarran-Ferguson Act does not apply because the FCIA specifically relates to the business of insurance. Finally, we conclude that the arbitration provision in each crop insurance policy requires the parties to arbitrate disputes over adjustment actions. The district court did not err in ordering arbitration.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V. LAMONT RUFFIN, ALSO KNOWN AS LAMONT ROLAND, APPELLANT.

789 N.W.2d 19

Filed September 17, 2010. No. S-09-972.

1. **Judgments: Appeal and Error.** When dispositive issues on appeal present questions of law, an appellate court has an obligation to reach an independent conclusion irrespective of the decision of the court below.
2. **Jurisdiction: Affidavits: Fees: Appeal and Error.** A poverty affidavit serves as a substitute for the docket fee otherwise required upon appeal, and an in forma pauperis appeal is perfected when the appellant timely files a notice of appeal and a proper affidavit of poverty.
3. **Affidavits: Good Cause: Appeal and Error.** Generally, in the absence of good cause evident in the record, it is necessary for a party appealing to personally sign the affidavit in support of her or his motion to proceed in forma pauperis.

Petition for further review from the Court of Appeals, IRWIN, SIEVERS, and MOORE, Judges, on appeal thereto from the District Court for Buffalo County, JOHN P. ICENOGLE, Judge. Judgment of Court of Appeals affirmed.

Mitchel L. Greenwall, of Yeagley, Swanson & Murray, L.L.C., for appellant.

Jon Bruning, Attorney General, and Kimberly A. Klein for appellee.

WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

The Nebraska Court of Appeals dismissed the appeal of Lamont Ruffin, also known as Lamont Roland, for lack of jurisdiction. Ruffin filed a petition for further review, which we granted. We ordered the case submitted without oral argument under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008). We conclude that because the poverty affidavit filed in this appeal was signed by his attorney rather than by Ruffin and good cause for not signing the poverty affidavit is not evident in the record, the appellate courts were not vested with jurisdiction over this appeal. On further review, we conclude that the Court of Appeals' ruling which dismissed the appeal was correct and consistent with *State v. Dallmann*, 260 Neb. 937, 621 N.W.2d 86 (2000). We therefore affirm the order of the Court of Appeals which dismissed the appeal.

STATEMENT OF FACTS

Ruffin was convicted in 2004 of first degree sexual assault and was sentenced to imprisonment for 18 to 40 years. Ruffin's conviction and sentence were affirmed by the Court of Appeals in 2004. See *State v. Ruffin*, No. A-04-313, 2004 WL 2792466 (Neb. App. Dec. 7, 2004) (not designated for permanent publication). Ruffin filed a motion for postconviction relief on December 31, 2008. The district court for Buffalo County denied the motion on September 3, 2009, without an evidentiary hearing. It is the postconviction action which gives rise to the current case.

On October 1, 2009, Ruffin filed a notice of intent to appeal the denial of his motion for postconviction relief. On that day, he also filed in the district court an application to proceed in

forma pauperis and a poverty affidavit that was signed by his attorney. On October 2, the district court granted the application and ordered that Ruffin be allowed to proceed in forma pauperis.

Following a jurisdictional review, the Court of Appeals issued an order to show cause why Ruffin's appeal should not be dismissed for lack of jurisdiction. The Court of Appeals noted in the order that although Ruffin timely filed his notice of appeal, the poverty affidavit, filed in lieu of the statutory docket fee, was signed by Ruffin's attorney rather than by Ruffin himself. The Court of Appeals cited *State v. Stuart*, 12 Neb. App. 283, 671 N.W.2d 239 (2003), and *In re Interest of T.W. et al.*, 234 Neb. 966, 453 N.W.2d 436 (1990), for the proposition that absent good cause evident in the record, a poverty affidavit signed by an appellant's counsel is not sufficient to vest an appellate court with jurisdiction.

In his response to the show cause order in which he asserted that the Court of Appeals had jurisdiction, Ruffin relied on *Dallmann, supra*. Ruffin argued that if an application to proceed in forma pauperis on appeal has been filed and granted by the trial court, an appellate court acquires jurisdiction when the notice of appeal is filed regardless of who signed the poverty affidavit. Ruffin also asserted that because he was incarcerated at the Nebraska State Penitentiary, a maximum security facility, it was impossible for him to meet with his attorney anywhere other than at the penitentiary, and therefore good cause existed to allow his attorney to sign the poverty affidavit.

The Court of Appeals rejected Ruffin's arguments and showing of cause and dismissed the appeal for lack of jurisdiction. We granted Ruffin's petition for further review and ordered the case submitted without oral argument.

ASSIGNMENT OF ERROR

Ruffin asserts that the Court of Appeals erred by dismissing his appeal for lack of jurisdiction.

STANDARD OF REVIEW

[1] When dispositive issues on appeal present questions of law, an appellate court has an obligation to reach an independent

conclusion irrespective of the decision of the court below. *State v. Head*, 276 Neb. 354, 754 N.W.2d 612 (2008).

ANALYSIS

Ruffin claims that the Court of Appeals erred when it concluded that it lacked jurisdiction and dismissed this appeal. As an initial matter, Ruffin notes that he was granted in forma pauperis status for purposes of appeal in the district court. He asserts that the Court of Appeals had jurisdiction under the reasoning in *State v. Dallmann*, 260 Neb. 937, 621 N.W.2d 86 (2000). Ruffin maintains that an appellate court acquires jurisdiction regardless of the condition of the poverty affidavit when the notice of appeal is timely filed if the application to proceed in forma pauperis has been filed and granted by the trial court. Ruffin also asserts that good cause existed as to why his attorney should have been allowed to sign the poverty affidavit. Ruffin points to the fact that he was incarcerated at a maximum security facility and that it was therefore impossible for him to meet with his attorney anywhere other than at the penitentiary. We conclude that Ruffin misreads *Dallmann* and that under *Dallmann* and the controlling civil procedure statutes, and given the absence of good cause, the Court of Appeals did not err when it dismissed this appeal.

We take this opportunity to discuss the proper reading of *Dallmann*. In *Dallmann*, for reasons explained therein, we excused the failure of the poverty affidavit to include statements of the nature of the action, defense, or appeal, and the belief that the affiant is entitled to redress. *Dallmann* does not excuse a poverty affidavit which is untimely filed, not properly notarized, or signed by an attorney rather than a party.

[2] Neb. Rev. Stat. § 25-1912 (Reissue 2008), applicable to civil and criminal appeals, generally provides that an appeal may be taken by filing a notice of appeal and depositing the required docket fee with the clerk of the district court. We have noted that a poverty affidavit serves as a substitute for the docket fee otherwise required upon appeal and that an in forma pauperis appeal is perfected when the appellant timely files a notice of appeal and a proper affidavit of poverty. See *In re Interest of Fedalina G.*, 272 Neb. 314, 721 N.W.2d

638 (2006). See, generally, Neb. Rev. Stat. § 25-2301 et seq. (Reissue 2008).

[3] In *In re Interest of T.W. et al.*, 234 Neb. 966, 453 N.W.2d 436 (1990), we noted that the poverty affidavits filed in the appeals were not signed by the appellants but instead by their attorneys. In *In re Interest of T.W. et al.*, we stated that under § 25-2301 (Reissue 1989), "the impoverished appellant, not her or his attorney, [must] execute the affidavit which substitutes for the payment of fees and costs and the posting of security." 234 Neb. at 967, 453 N.W.2d at 437. We therefore stated that "an affidavit of poverty executed by a party's attorney does not suffice." *Id*. In *In re Interest of T.W. et al.*, for reasons in addition to the statutory requirement, we disapproved the practice of an attorney's signing the affidavit, stating:

> The practice of an attorney's filing an affidavit on behalf of his client asserting the status of that client is not approved, inasmuch as not only does the affidavit become hearsay, but it places that attorney in a position of a witness thus compromising his role as an advocate.

234 Neb. at 967-68, 453 N.W.2d at 437. We therefore stated in *In re Interest of T.W. et al.* that "generally, in the absence of good cause evident in the record, it is necessary for a party appealing to personally sign the affidavit in support of her or his motion to proceed in forma pauperis." 234 Neb. at 968, 453 N.W.2d at 437.

At the time *In re Interest of T.W. et al.* was decided, § 25-2301, upon which we relied, provided as follows:

> Any court of the State of Nebraska, except the Nebraska Workers' Compensation Court, or of any county shall authorize the commencement, prosecution, or defense of any suit, action, or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay such costs or give security. Such affidavit shall state the nature of the action, defense, or appeal and affiant's belief that he or she is entitled to redress. An appeal may not be taken in forma pauperis if the trial court certified in writing that it is not taken in good faith.

After an amendment in 1999, the relevant language was transferred to § 25-2301.01 and provides:

> Any county or state court, except the Nebraska Workers' Compensation Court, may authorize the commencement, prosecution, defense, or appeal therein, of a civil or criminal case in forma pauperis. An application to proceed in forma pauperis shall include an affidavit stating that the affiant is unable to pay the fees and costs or give security required to proceed with the case, the nature of the action, defense, or appeal, and the affiant's belief that he or she is entitled to redress.

In the earlier version of § 25-2301, applicable to civil and criminal appeals, the language relative to the requirement that the party execute the affidavit read that "a person . . . makes an affidavit that he or she is unable to pay such costs or give security." Section 25-2301.01, applicable to civil and criminal appeals, now requires the filing of "an affidavit stating that the affiant is unable to pay the fees and costs." It is obvious that it is the financial condition of the party as affiant and not the financial wherewithal of the attorney that is relevant. Because the current statute refers to "the affiant" making statements regarding his or her financial condition, it is clear that § 25-2301.01 still requires that the party, rather than the party's attorney, sign the affidavit.

Contrary to the foregoing statutory analysis, Ruffin argues that based on our decision in *State v. Dallmann*, 260 Neb. 937, 621 N.W.2d 86 (2000), an appellate court acquires jurisdiction when the trial court has granted an application for in forma pauperis status on appeal, regardless of whether there is a deficiency in the poverty affidavit. Ruffin misreads *Dallmann*.

In *Dallmann*, the appellant signed an affidavit that included a statement that he was unable to pay the cost of the appeal but did not include other statements listed in § 25-2301.01, namely, a statement as to the nature of the action and a statement that he believed he was entitled to redress. The State challenged appellate jurisdiction on the basis that the poverty affidavit did not include the statutorily indicated statements. We rejected the State's challenge and held that

> if a request to proceed in forma pauperis is granted by the district court, this court obtains jurisdiction when the

> notice of appeal is timely filed, and any failure of the affidavit to state the nature of the action or that the affiant is entitled to redress under § 25-2301.01 will not divest this court of jurisdiction.

260 Neb. at 948, 621 N.W.2d at 97. Our decision in *Dallmann* referred to the in forma pauperis statutes applicable to civil and criminal cases. We noted in *Dallmann* that § 25-2301.02 provides that an application to proceed in forma pauperis shall be granted unless a timely objection regarding the merits of the claim of poverty or the merits of the case is made on the basis that the applicant either has sufficient funds to pay costs, fees, or security or is asserting legal positions which are frivolous or malicious. We stated that § 25-2301.02 "makes clear that challenges to the ability of a defendant to proceed in forma pauperis are to occur in the district court and that the district court is charged with the responsibility of granting or denying the motion to proceed in forma pauperis." *Dallmann*, 260 Neb. at 947, 621 N.W.2d at 96. We further stated:

> It is not a function of this court to determine whether an affidavit to proceed in forma pauperis contains specific language stating the nature of the case and that the affiant is entitled to redress. These determinations must be made by the district court. Thus, any objection that the poverty affidavit fails to state the nature of the action, defense, or appeal, and the belief that the affiant is entitled to redress, must also be raised in the district court.

Id. at 948, 621 N.W.2d at 96-97. For completeness, we now observe that § 25-2301.02 permits an appeal to be reviewed de novo on the record where a party objects to a ruling by the trial court denying in forma pauperis status.

A reading of the opinion in *Dallmann* shows that it was concerned with a poverty affidavit which failed to include statements of the nature of the action, defense, or appeal, and the belief that the affiant is entitled to redress. These purported failures raised for the first time on appeal were overlooked by this court for the reasons indicated in *Dallmann*. Ruffin attempts to expand the holding in *Dallmann* to forgive any deficiency in the poverty affidavit where the trial court has granted an application to proceed in forma pauperis. Ruffin's reading of *Dallmann* is too broad.

In that case, this court noted that we had "never addressed whether all the exact requirements of the [in forma pauperis statutes] had to be met in order to vest this court with jurisdiction over an appeal." *State v. Dallmann*, 260 Neb. 937, 946, 621 N.W.2d 86, 95 (2000). In *Dallmann*, we recognized that in prior cases, we had "dismissed for lack of jurisdiction when the appellant failed to properly sign the poverty affidavit under oath," and we did not disapprove of these cases. 260 Neb. at 946, 621 N.W.2d at 96. See, *In re Interest of T.W. et al.*, 234 Neb. 966, 453 N.W.2d 436 (1990); *State v. Hunter*, 234 Neb. 567, 451 N.W.2d 922 (1990); *In re Interest of K.D.B.*, 233 Neb. 371, 445 N.W.2d 620 (1989). With this recognition in mind, and in view of the statutory role played by the trial court in assessing the merits of the claim of poverty upon an objection raised under § 25-2301.02, we circumscribed our holding in *Dallmann*. We limited the forgiveness in *Dallmann* to the failure to include in the poverty affidavit statements of the nature of the action, defense, or appeal, and the belief that the affiant is entitled to redress in those cases in which in forma pauperis status had been granted by the trial court without objection.

We note that *Dallmann* did not change other requirements related to the filing of poverty affidavits by persons seeking in forma pauperis status, such as the requirement that "a poverty affidavit must show on its face, by the certificate of an authorized officer before whom it is taken, evidence that it was duly sworn to by the party making the affidavit," see *In re Interest of K.D.B.*, 233 Neb. at 372, 445 N.W.2d at 622, and the requirement that in order to vest the appellate courts with jurisdiction, a poverty affidavit must be filed within the time that the docket fee would otherwise have been required to be deposited, see *State v. Haase*, 247 Neb. 817, 530 N.W.2d 617 (1995). An affidavit is a document with certain required characteristics, and we believe that the Legislature's use of the word "affidavit" in the in forma pauperis statutes was deliberate and that the "affidavit" in § 25-2301.01 continues to require the hallmarks of an affidavit such as the signature of the affiant and a certificate of an authorized officer. *Dallmann* is thus limited and does not change the requirement that the poverty affidavit must be

properly signed under oath by the party, rather than the party's attorney, in order to serve as a substitute for the payment of the docket fee and to vest an appellate court with jurisdiction. See *State v. Stuart*, 12 Neb. App. 283, 671 N.W.2d 239 (2003). Ruffin did not sign the poverty affidavit, and such failure is not excused under *Dallmann*.

Because *Dallmann* did not change the requirement that the appellant rather than the appellant's attorney must sign the poverty affidavit, we must consider whether good cause is evident in the record as to why Ruffin could not sign the affidavit and it was necessary that his attorney sign it. Ruffin cites no authority for his argument that his confinement to a maximum security prison was good cause for the poverty affidavit to be signed by his attorney. Our reasoning relative to good cause is reflected in *In re Interest of T.W. et al.*, in which we concluded therein that "[m]ere absence from the jurisdiction of the court from which the appeal is being taken, without more, does not show good cause for a party's failure to sign a poverty affidavit." 234 Neb. at 968, 453 N.W.2d at 438. We recognize that incarceration makes it inconvenient for Ruffin's attorney to obtain Ruffin's signature on the poverty affidavit, but we believe that such circumstance does not make it "an incredible, if not impossible, burden," as Ruffin asserts in his memorandum brief filed with this court. Good cause is not evident in the record, and we cannot agree with Ruffin that it was necessary that his poverty affidavit be signed by his attorney rather than by Ruffin himself. The Court of Appeals did not err when it determined that Ruffin failed to show good cause why his appeal should not be dismissed for lack of jurisdiction.

CONCLUSION

Notwithstanding the fact that the trial court granted in forma pauperis status for purposes of appeal, *State v. Dallmann*, 260 Neb. 937, 621 N.W.2d 86 (2000), does not eliminate the requirement that the appellant, rather than the appellant's attorney, must sign the poverty affidavit filed in support of in forma pauperis status on appeal. In this case, Ruffin did not sign the affidavit and Ruffin did not show good cause evident in the record why it was necessary that the poverty affidavit

be signed by Ruffin's attorney. Jurisdiction did not vest in the appellate courts. Therefore, on further review, we affirm the order of the Court of Appeals which dismissed this appeal for lack of jurisdiction.

AFFIRMED.

HEAVICAN, C.J., not participating.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. THOMAS J. LINDMEIER, RESPONDENT.

788 N.W.2d 555

Filed September 17, 2010. No. S-09-1079.

Original action. Judgment of suspension.

Kent L. Frobish, Assistant Counsel for Discipline, for relator.

David J. Cullan for respondent.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

INTRODUCTION

Respondent, Thomas J. Lindmeier, was admitted to the practice of law in the State of Nebraska on July 2, 1976. At all relevant times, he was engaged in the private practice of law in Omaha, Nebraska. On October 30, 2009, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges consisting of two counts against respondent. In the first count, it was alleged that by his conduct in July and August 2008 with respect to a client matter, respondent violated his oath of office as an attorney and various provisions of the Nebraska Rules of Professional Conduct. In the second count, it was alleged that by his conduct in August and September 2008 with respect to a different client matter, respondent violated his oath of office as an attorney and two provisions of the Nebraska Rules of