

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WO**

**KM**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Stephen Bishop,  
Plaintiff,  
vs.  
Dora B. Schriro, et al.,  
Defendants.

No. CV 08-964-PHX-SMM (JRI)

**ORDER**

Plaintiff Stephen Bishop, who is confined in the Arizona State Prison Complex-Eyman, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983. On June 9, 2008, the Court dismissed Counts I and III of the Complaint and directed Defendant Schriro to answer Count II.

On August 7, 2008, Plaintiff filed a Motion to File an Interlocutory Appeal (Doc. #11) and a Motion to Correct the Motion to File Interlocutory Appeal (Doc. #12). On August 12, 2008, Plaintiff filed a Motion to Stay Proceedings (Doc. #13).

**I. Motion to File Interlocutory Appeal and Motion to Correct**

In his Motion to Correct, Plaintiff states that in his Motion to File Interlocutory Appeal, he mistakenly referred to Counts I and II of the Complaint. Plaintiff states that he intended to refer to Counts I and III of the Complaint that he intended to seek leave to file an interlocutory appeal with respect to Counts I and III of the Complaint. The Court will grant the Motion to Correct and will consider Plaintiff’s Motion to File Interlocutory Appeal with respect to Counts I and III of the Complaint.

1 In his Motion to File Interlocutory Appeal, Plaintiff states that the Court erroneously  
2 dismissed Counts I and III of the Complaint and seeks leave to file an appeal of the dismissal  
3 of those claims.

4 The Court's June 9, 2008 Order dismissed without prejudice all but one Defendant  
5 and some, but not all, of Plaintiff's claims. The Court did not direct the entry of a final  
6 judgment as to the dismissed Defendants or claims. See Fed. R. Civ. P. 54(b). The Order,  
7 therefore, is not an appealable final order. See 28 U.S.C. § 1291; Anderson v. Allstate Ins.  
8 Co., 630 F.2d 677, 680 (9th Cir. 1980) ("Because the orders appealed from dismiss the action  
9 as to only some of the defendants, it is clear that they were not final orders pursuant to 28  
10 U.S.C. § 1291 at the time they were entered. Moreover, plaintiffs did not obtain the  
11 interlocutory certificate required by Fed. R. Civ. P. 54(b)."). In addition, the Order is not an  
12 interlocutory order generally appealable under 28 U.S.C. § 1292(a), and the Court did not  
13 provide the statement necessary to make the Order an interlocutory order appealable under  
14 28 U.S.C. § 1292(b) because the dismissal of Counts I and III of the Complaint did not  
15 "involve[] a question law as to which there is substantial ground for difference of opinion .  
16 ..." 28 U.S.C. § 1292(b).

17 Accordingly, the Court will deny Plaintiff's Motion to File Interlocutory Appeal.

## 18 **II. Motion to Stay Proceedings**

19 In his Motion to Stay Proceedings, Plaintiff states that he attempted to file a motion  
20 titled "Motion to Declare this Action as Imminent Danger and Request Seal," but that the  
21 motion does not appear on the docket for this case. Plaintiff asks that the Court: (1) stay  
22 proceedings in this action until the document is found; (2) consider the exhibits filed with the  
23 Complaint; (3) order Defendant to provide Plaintiff with a copy of all documents and logs  
24 relating to legal mail; and (4) order Defendant to "put a tracer" on his missing legal mail.

25 The Court notes first that on May 23, 2008, the Court received a document from  
26 Plaintiff titled "Motion to Declare this Action as an Imminent Danger and Request to Seal."  
27 The Motion to Declare was labeled with the case number CV 95-1601-PHX-SMM (MS) and  
28 was therefore filed in that action. To the extent that Plaintiff may have intended to file the

1 Motion to Declare in the present action, he must include the case number for *this* action on  
2 the face of the Motion. Further, Plaintiff's requests with respect to mail logs and documents  
3 are akin to requests for discovery and are therefore premature. The Court will issue a  
4 scheduling order with deadlines for conducting discovery and Plaintiff may request  
5 documents from Defendant at that time. The Court sees no reason to stay proceedings in this  
6 action and will deny the Motion to Stay Proceedings.

7 **IT IS ORDERED:**

8 (1) Plaintiff's August 7, 2008 Motion to File Interlocutory Appeal (Doc. #11) is  
9 **denied.**

10 (2) Plaintiff's August 7, 2008 Motion to Correct Motion to File Interlocutory  
11 Appeal (Doc. #12) is **granted.**

12 (3) Plaintiff's August 12, 2008 Motion to Stay Proceedings (Doc. #13) is **denied.**

13 DATED this 4<sup>th</sup> day of September, 2008.

14  
15  
16   
17 \_\_\_\_\_  
18 Stephen M. McNamee  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28