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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,

CASE NO. 1:08-cv-01186-LJO-BAM PC

Plaintiff,

APPEAL NO. 12-15327

v.

**NOTICE AND ORDER FINDING THAT
PLAINTIFF IS NOT ENTITLED TO
PROCEED IN FORMA PAUPERIS ON
THE APPEAL FILED JANUARY 26, 2012**

D. ADAMS, et al.,

Defendants.

**ORDER DIRECTING CLERK'S OFFICE
TO SERVE COPY OF ORDER ON NINTH
CIRCUIT**

_____/

Plaintiff Danny James Cohea, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 13, 2008. On December 21, 2011, the Court dismissed this action, with prejudice, based on Plaintiff's failure to prosecute. (ECF Nos. 86, 87.) Plaintiff filed a notice of appeal on January 24, 2012. (ECF No. 89.)

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or (B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:
(A) denies a motion to proceed on appeal in forma pauperis;

1 (B) certifies that the appeal is not taken in good faith; or
2 (C) finds that the party is not otherwise entitled to proceed in forma pauperis.

3 Fed. R. App. P. 24(a)(4).

4 Plaintiff was proceeding in forma pauperis in this action in the district court, and Plaintiff
5 is entitled to proceed in forma pauperis on appeal unless the Court makes a finding to the contrary.
6 For the reason that follows, the Court finds that Plaintiff is not entitled to proceed in forma pauperis
7 on his appeal filed January 24, 2012.

8 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n
9 no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more
10 prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court
11 of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
12 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
13 physical injury.” Plaintiff became subject to section 1915(g) on March 1, 2011, when his third action
14 was dismissed for failure to state a claim upon which relief may be granted.¹ Plaintiff is subject to
15 section 1915(g) and does not meet the imminent danger exception. Therefore, Plaintiff is not entitled
16 to proceed in forma pauperis on appeal. Fed. R. App. P. 24(a)(4)(C).

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is not entitled to proceed in forma pauperis
19 on the appeal filed on January 24, 2012;
- 20 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(C), this order serves as
21 notice to the parties and the United States Court of Appeals for the Ninth Circuit of
22 the finding that Plaintiff is not entitled to proceed in forma pauperis for this appeal;
23 and

24 ///

25 ///

26
27 ¹ The Court takes judicial notice of the following cases: 2:97-cv-00366-FCD-DAD Cohea v. Bray, et al.,
28 (E.D. Cal.) (dismissed March 26, 1998 for failure to state a claim); 3:09-cv-00679-RCJ-RAM Cohea v. Access
Secure Pak, et al., (D. Nev.) (dismissed August 3, 2010 for failure to state a claim); and 3:10-cv-00437-IEG-RBB
Cohea v Patzloff, et al., (S.D. Cal.) (dismissed March 1, 2011 for failure to state a claim).

