

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**MARIAM MALONE COLETTE
MARTINEZ,**

Plaintiff,

-vs-

Case No. 6:09-cv-802-Orl-JADAB

**OFFICER YONG C. HALL, and OFFICER
ARRIAGE,**

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION: MOTION TO APPEAL IN FORMA PAUPERIS (Doc. No. 78)

FILED: October 12, 2010

THEREON it is RECOMMENDED that the motion be DENIED.

Upon the filing of an affidavit of indigency, any court of the United States may authorize a party to proceed *in forma pauperis*. 28 U.S.C. § 1915(a). However, “an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The good faith standard is an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.*

Initially, the Court notes that the motion purports to be directed to the appellate court, not the district court. The Court construes it as a motion for leave to proceed *in forma pauperis* addressed to this Court, as that is where the *pro se* Plaintiff has filed it. On the merits, the Court finds the appeal to be frivolous on its face. In Order dated July 7, 2010, the Court dismissed the case without prejudice (Doc. No. 71). According to the docket, the Notice of Appeal, directed to the July 7, 2010 Order was not filed until September 29, 2010 (Doc. No. 77). Assuming for present purposes that the July 7 Order was an appealable Order, the Notice of Appeal must have been filed within 30 days after the Order was entered. Rule 4(a)(1)(A), Federal Rules of Appellate Procedure. Here, it was not. As such, the appeal is not timely.¹ Moreover, the Notice of Appeal offers no justiciable issue, other than to express Plaintiff's discontent with the employees of the Middle District, and is therefore without arguable merit.

It is therefore **respectfully recommended** that the Court **certify** that the appeal is not taken in good faith. If the Court so certifies in writing, the application should be denied pursuant to 28 U.S.C. § 1915(a)(3).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen (14) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Recommended in Orlando, Florida on October 14, 2010.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

¹Even if the Court were to construe Plaintiff's untimely motion for reconsideration (Doc. No. 75) of the July 7 Order as tolling the time to appeal, Rule 4(4)(A), Fed. R. App. Pro., Judge Antoon denied that motion by Order dated August 19, 2010 (Doc. No. 76). The Notice of Appeal was not filed until September 29, 2010, more than 30 days later.

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy