

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

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONALD EDWARD BENTON,

Plaintiff,

v.

TIMOTHY S. CORY, *et al.*,

Defendants.

Case No. 2:07-CV-01686-KJD-RJJ

ORDER

Presently before the Court are Plaintiff's Requests for a Scheduling Conference (#74/75). Essentially, Plaintiff asserts that his appeal to the Ninth Circuit Court of Appeals was dismissed because the Court's Order (#57) was not a final, appealable order. According to Benton's argument, the action withdrawn by Benton from bankruptcy court should still be proceeding before this Court, or the Court must enter judgement against Benton so that he can appeal that final order.

However, the Court of Appeals could not have been more clear in dismissing Benton's appeal (#66). He may not proceed before the Court of Appeals, or here before the district court. Orders denying motions to withdraw reference may not be appealed until finally disposed of in bankruptcy court. See In re Kissel Co., 105 F.3d 1324, 1325 (9th Cir. 1997)(district court's denial of motion to withdraw reference to bankruptcy court is not final or appealable)(citing In re Lieb, 915 F.2d 180, 183-84 (5th Cir. 1990)("a district court's decision whether or not to withdraw a proceeding from


1 bankruptcy court does not end the litigation, but rather involves the selection or designation of the
2 forum in which the merits will be finally determined...[Benton] may challenge the withdrawal order
3 if and when [he] appeal[s] the final judgment against him”). Furthermore, the Ninth Circuit’s Order
4 (#69) barring Benton from further filing in his closed appeal belies his assertions that the Court
5 merely need to enter a final judgment that he can appeal.

6 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff’s Requests for a Scheduling
7 Conference (#74/75) are **DENIED**;

8 **IT IS FURTHER ORDERED** that the Clerk of the Court refuse further filings in this closed
9 action.

10 DATED this 14th day of October 2010.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



Kent J. Dawson
United States District Judge