

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

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CLIFFORD EPPERSON, SR.,  
  
Plaintiff,  
  
v.  
  
HENDERSON DETENTION CENTER,  
  
Defendants.

Case No. 2:12-cv-02173-MMD-GWF

ORDER

This prisoner civil rights matter comes before the Court following upon plaintiff's filing of a notice of appeal (dkt. no. 39). Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies to the Court of Appeals that the appeal is not taken in good faith.


With deference to the final authority of the Court of Appeals in matters relating to its own jurisdiction, it does not appear that there is jurisdiction over the appeal because there has not been entry of a final judgment. The Court's March 18, 2013, order (dkt. no. 34) did not direct entry of final judgment but instead dismissed the complaint without prejudice and with an opportunity to amend. Such an order does not give rise to a final judgment and thus does not constitute an appealable final order. *See, e.g., Santoro v. CTC Foreclosures Services Corp.*, 193 F.3d 1106 (9<sup>th</sup> Cir. 1999). Moreover, an order denying appointment of counsel is not an appealable final order. *See, e.g., Kuster v. Block*, 773 F.2d 1048, 1049 (9th Cir.1985). The invocation of appellate jurisdiction accordingly would appear to be frivolous, such that an appeal would be dismissed in the case of a non-indigent litigant.

1           The Court additionally would note that this matter has proceeded as promptly as  
2 its docket and resources have allowed following upon, *inter alia*, plaintiff's presentation  
3 of a properly-presented pauper application and thereafter payment of the initial partial  
4 filing fee. See dkt. nos. 1, 10, 15, 20, 30 & 34. The Court's order dismissing the  
5 complaint without prejudice sought to indicate to plaintiff how the deficiencies in the  
6 complaint possibly might be remedied.

7           IT IS THEREFORE ORDERED, pursuant to 28 U.S.C. § 1915(a)(3), that the  
8 Court certifies to the Court of Appeals that the appeal is not taken in good faith.

9           IT IS FURTHER ORDERED, so that the certification herein shall be clearly  
10 marked on the docket for review by the Court of Appeals, that the Clerk of this Court  
11 shall docket this order on the docket sheet as an order that certifies to the Court of  
12 Appeals that the appeal is not taken in good faith and shall forward same to the Ninth  
13 Circuit in a manner consistent with the Clerk's current practice, in connection with No.  
14 13-15555 in the Court of Appeals.

15           DATED THIS 1<sup>st</sup> day of April 2013.

16  
17   
18 \_\_\_\_\_  
19 MIRANDA M. DU  
20 UNITED STATES DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28