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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:	Case No. 10-50583-D-7
JIMMIE EARL STEPHEN,	
Debtor.	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On December 16, 2010, the debtor in this case, Jimmie Earl Stephen (the "debtor"), filed a notice of appeal from this court's order denying his application for waiver of the filing fee and the order dismissing this chapter 7 case. The appeal is pending in the Ninth Circuit Bankruptcy Appellate Panel ("BAP") as Case No. EC-10-1511.[1]

On March 25, 2011, the debtor filed in the BAP a motion for leave to proceed with the appeal in forma pauperis (the "IFP Motion"). On April 7, 2011, the BAP transferred the IFP Motion to the United States District Court for this district on the basis that the BAP has no authority to grant in forma pauperis motions under 28 U.S.C. § 1915(a) because bankruptcy courts are not "court[s] of the United States" as defined in 28 U.S.C. §

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1. By order of the BAP dated March 7, 2011, the scope of the appeal has been limited to the November 30, 2011 order dismissing the case.

451. The BAP cited Perroton v. Gray (In re Perroton), 958 F.2d 889 (9th Cir. 1992) and Determan v. Sandoval (In re Sandoval), 186 B.R. 490, 496 (9th Cir. BAP 1995) for this holding.

The district court, in turn, on April 28, 2011 issued an order holding that, as units of the district court under 28 U.S.C. § 151, "[w]ithin their subject matter jurisdiction, 28 U.S.C. § 157, bankruptcy judges have authority to grant in forma pauperis status as would any other judge of the district court."[2] Thus, the district court concluded that the IFP Motion had been erroneously transferred to the district court rather than the bankruptcy judge who presided in this case, and transferred the IFP Motion to this court. The district court did not address the Perroton and Sandoval cases.

As the BAP is comprised of bankruptcy judges, it appears the BAP is, as much as this court, a "court of the United States" with, according to the district court, the jurisdiction to hear and determine in forma pauperis motions under 28 U.S.C. § 1915(a). This court believes it is most appropriate for the court where the matter is pending to decide the debtor's request for a waiver of the filing fee for that matter. If the BAP feels differently, upon remand with any instructions, this court will decide the IFP Motion.

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2. Order filed April 28, 2011 in Stephen v. Fukushima, United States District Court, Eastern District of California, Case No. MC 0037 MCE GGH PS, at 2:4-6.

Accordingly, this court will transfer the IFP Motion back to the BAP. The court will issue an appropriate order.

Dated: May 12, 2011

Robert Bardwil
ROBERT S. BARDWIL
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, caused to be mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Jimmie Earl Stephen C56483
P.O. Box 4000-22-H-3-L
Vacaville, CA 95696

Alan Fukushima
9245 Laguna Springs Dr., #200
Elk Grove, CA 95758

DATE: MAY 12 2011

Deputy Clerk