

**APPENDIX A**

Case: 16-56750 04/19/2018 DktEntry: 10

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CHARLES G. KINNEY  
Plaintiff-Appellant,

v.

PHILIP GUTIERREZ,  
Defendant-Appellee.

D.C. No. 2:16-cv-07440-DMG,  
Central Dist. of Cal., LA

**FILED**  
**APR 19 2018**  
**MOLLY C. DWYER, CLERK**  
**U.S. COURT OF APPEALS**

**ORDER**

Before: WALLACE, SILVERMAN, and BYBEE,  
Circuit Judges.

The panel has voted to deny the petition for  
panel rehearing.

The full court has been advised of the  
petition for rehearing en banc and no judge has  
requested a vote on whether to rehear the matter  
en banc. See Fed. R. App. P. 35.

Kinney's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 9) are denied.

No further filings will be entertained in this closed case.

**APPENDIX B**

Case: 16-56750 12/28/2017 DktEntry: 8

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CHARLES G. KINNEY**  
Plaintiff-Appellant,

v.

**PHILIP GUTIERREZ,**  
Defendant-Appellee.

D.C. No. 2:16-cv-07440-DMG,  
Central Dist. of Cal., LA

**FILED**  
**DEC 28 2017**  
**MOLLY C. DWYER, CLERK**  
**U.S. COURT OF APPEALS**

**MEMORANDUM \***

Appeal from the United States District Court for  
the Central District of California Dolly M. Gee,  
District Judge, Presiding

Submitted December 18, 2017\*\*

Before: WALLACE, SILVERMAN, and BYBEE,  
Circuit Judges.

Charles G. Kinney appeals pro se from the district court's order dismissing his action seeking a declaratory judgment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal on the basis of judicial immunity. *Romano v. Bible*, 169 F.3d 1182, 1186 (9th Cir. 1999). We affirm.

The district court properly dismissed Kinney's claims against Judge Gutierrez on the basis of judicial immunity. See *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (describing factors relevant to whether an act is judicial in nature and subject to judicial immunity). Contrary to Kinney's contention, Judge Gutierrez was not acting in a ministerial or administrative capacity when he issued the remand orders.

The district court did not abuse its discretion by dismissing the complaint without leave to amend because amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We reject as unsupported by the record Kinney's contention that the district judge was biased.

We do not consider arguments and allegations raised for the first time on appeal. See

*Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Kinney's request for oral argument, set forth in the opening brief, is denied.

No. \_\_\_\_

IN THE  
SUPREME COURT OF THE  
UNITED STATES

\_\_\_\_ ♦ \_\_\_\_\_  
CHARLES G. KINNEY,  
*Petitioner,*

v.

PHILIP GUTIERREZ  
*Respondent,*

\_\_\_\_ ♦ \_\_\_\_\_  
On Petition For Writ Of  
Certiorari To The  
Ninth Circuit Court of Appeals  
#16-56750 (April 19, 2018 denial  
of petition for rehearing) [7 of 8]

U.S. District Court, Central  
District of Calif. (Los Angeles)  
#2:16-cv-07440-DMG

\_\_\_\_ ♦ \_\_\_\_\_  
SUPPLEMENTAL APPENDIX  
FOR A WRIT OF CERTIORARI

\_\_\_\_ ♦ \_\_\_\_\_  
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## **SUPPLEMENTAL APPENDIX SA**

Case 2:16-cv-07440-DMG Dk 7 Filed 10/12/16

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **CV 16-7440-DMG**

Title *Charles G. Kinney v. Philip Gutierrez*

### **CV-90 CIVIL MINUTES—GENERAL**

Initials of Deputy Clerk KT

Present: The Honorable DOLLY M. GEE,

UNITED STATES DISTRICT JUDGE

KANE TIEN NOT REPORTED

Deputy Clerk Court Reporter

Attorneys Present for Plaintiff(s) None Present

Attorneys Present for Defendant(s) None Present

### **Proceedings: IN CHAMBERS - ORDER TO SHOW CAUSE**

On July 7, 2016, *pro se* Plaintiff Charles G. Kinney filed the operative Amended Complaint against multiple defendants, including Hon. Philip S. Gutierrez, United States District Judge. [Doc. # 2.] Kinney generally alleges that Judge Gutierrez and other state court judges ignored Kinney's rights under bankruptcy law and, in their rulings, failed to consider certain counter-claims and third-party complaints by Kinney. *Id.* ¶¶ 23-25. On October 4, 2016, Judge Gutierrez severed the claims pertaining to him from the



claims against the other defendants. [Doc. # 3.] Thus, this action is against Judge Gutierrez only.

The doctrine of judicial immunity protects judges from civil liability for performing their judicial duties. See *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (“judicial immunity is an immunity from suit, not just from ultimate assessment of damages”); *Meek v. County of Riverside*, 183 F.3d 962, 965-68 (9th Cir. 1999). Allegations of bad faith or malice are not enough to overcome judicial immunity. *Mireles*, 502 U.S. at 11; *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (judge retains immunity even “the action he took was in error, was done maliciously, or was in excess of his authority”). Judicial immunity, however, does not apply to judges’ nonjudicial actions, or actions not taken in their capacity as judges. *Harvey v. Waldron*, 210 F.3d 1008, 1012 (9th Cir. 2000). A judge is also not immune for judicial actions “taken in the complete absence of all jurisdiction.” *Id.*

Here, Kinney does not allege that Judge Gutierrez acted outside of his judicial capacity or in the absence of all jurisdiction. Accordingly, Kinney is ordered to show cause in writing, no later than **October 19, 2016**, why this action should not be dismissed with prejudice based on the doctrine of judicial immunity. Failure to timely respond to this Order to Show Cause will result in the dismissal of this action in its entirety.

**IT IS SO ORDERED.**

**SUPPLEMENTAL APPENDIX SB**

Case 2:16-cv-07440-DMG Dk 9 Filed 10/25/16

**UNITED STATES DISTRICT COURT JS-6  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL**

Case No. **CV 16-7440 DMG**  
Title *Charles G. Kinney v. Philip Gutierrez*

**CV-90 CIVIL MINUTES—GENERAL**  
Initials of Deputy Clerk KT

Present: The Honorable DOLLY M. GEE,  
UNITED STATES DISTRICT JUDGE  
KANE TIEN NOT REPORTED  
Deputy Clerk Court Reporter  
Attorneys Present for Plaintiff(s) None Present  
Attorneys Present for Defendant(s) None Present

**Proceedings: IN CHAMBERS - ORDER  
DISMISSING ACTION**

The Court incorporates its articulation of the doctrine of judicial immunity from the Order to Show Cause (“OSC”) that it issued on October 12, 2016. [Doc. # 7.] *Pro se* Plaintiff Charles G. Kinney’s OSC response inadequately addresses the Court’s concerns. *See* Doc. # 8 at 7-8 (characterizing Judge Gutierrez’s actions as “administrative” (i.e., non-judicial) omissions).

Contrary to Kinney’s contention, the allegations against Judge Gutierrez involve actions taken in his judicial capacity. Accordingly, because the doctrine of judicial immunity bars

Kinney's suit, this case is **DISMISSED with prejudice.**

**IT IS SO ORDERED.**