

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA C.R. 3(b) FINAL ORDER

February 1, 2019

No. 18-3309	ROSCOE CHAMBERS, Plaintiff - Appellant v. KRIS SCHMIDTS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:18-cv-50242 Northern District of Illinois, Western Division District Judge Philip G. Reinhard	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on January 3, 2019 and was given fourteen (14) days to pay the \$505.00 filing fee. The pro se appellant has not paid the \$505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of \$505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b)*. Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

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ORDER

January 3, 2019

Before

DIANE P. WOOD, *Chief Judge*
DANIEL A. MANION, *Circuit Judge*

No. 18-3309	ROSCOE CHAMBERS, Plaintiff - Appellant v. KRIS SCHMIDTS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:18-cv-50242 Northern District of Illinois, Western Division District Judge Philip G. Reinhard	

The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on December 6, 2018, by the pro se appellant.

2. **MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on December 6, 2018, by the pro se appellant.

IT IS ORDERED that the motion for leave to proceed in forma pauperis is **DENIED**. Appellant shall pay the required docketing fee within 14 days or else this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

3. If the motion to proceed on appeal in forma pauperis is denied by the district court, you must either pay the required \$500.00 docketing fee PLUS the \$5.00 notice of appeal filing fee to the District Court Clerk, within fourteen (14) days after service of notice of the action to the district court, or within thirty (30) days of that date, renew your motion to proceed on appeal in forma pauperis with this court. If the motion is renewed in this court, it must comply with the terms of Fed. R. App. P. 24(a). In addition, you must provide this court with a brief memorandum explaining why you contend the district court's denial of leave to proceed on appeal in forma pauperis is erroneous. **NOTE:** The document should be titled "**MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**" and must be filed within thirty (30) days of service of the order of the district court.

Further, this appeal is subject to the Prison Litigation Reform Act. Accordingly, **IT IS ORDERED** that all other proceedings in this appeal are **SUSPENDED** pending the assessment and payment of any necessary fees. See *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997). The court will take no further action in this appeal until the fee status is resolved.

Neither party should tender any brief or motion that is not related to appellant's fee status on appeal. Appellee is under no obligation either to file a brief or to respond to any such motion filed by appellant. Any motion not related to appellant's fee status will be deemed denied without further court action.

form name: c7_PLRA_FeeNoticeSent_DC(form ID: 227)

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ORDER

January 16, 2019

Before

DIANE P. WOOD, *Chief Judge*

DANIEL A. MANION, *Circuit Judge*

No. 18-3309	ROSCOE CHAMBERS, Plaintiff - Appellant v. KRIS SCHMIDTS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:18-cv-50242 Northern District of Illinois, Western Division District Judge Philip G. Reinhard	

Upon consideration of the **MOTION FOR RECONSIDERATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**, filed on January 14, 2019, by the pro se appellant,

IT IS ORDERED that the motion to reconsider is **DENIED**.

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Roscoe Chambers (13495-030),

Plaintiff,

v.

Kris Schmidts, et al.,

Defendants.

Case No. 18 C 50242

Judge Philip G. Reinhard

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* [2] is denied pursuant to 28 U.S.C. § 1915(g) and the complaint [1] is dismissed as frivolous and for failure of the plaintiff to pre-pay the \$400.00 filing fee and to disclose the fact that he has "struck out" under § 1915(g). This dismissal counts as a "strike" under § 1915(g). Having brought this lawsuit, plaintiff remains obligated to pay the \$400.00 filing fee. The court directs the trust fund officer at United States Penitentiary, Lewisburg, to make deductions in accordance with this order until the filing fee is paid. The Clerk of Court is directed to mail a copy of this order to plaintiff and the trust fund officer at plaintiff's place of incarceration. All other pending motions are denied as moot.

STATEMENT

Plaintiff, Roscoe Chambers, a federal prisoner confined at USP Lewisburg, brings this *pro se* civil rights lawsuit pursuant to 42 U.S.C. § 1983. Plaintiff alleges that officials in Whiteside County maliciously prosecuted him for driving under the influence. Judge Sara Darrow transferred this case from the Central District of Illinois by order of July 10, 2018. Now before the court are plaintiff's complaint for initial review pursuant to 28 U.S.C. § 1915A, his application for leave to proceed *in forma pauperis*, and his motion for attorney representation.

There are several problems with plaintiff's case that require dismissal. First, plaintiff acknowledges that he previously filed this lawsuit in state court. (*See* [1], p. 3.) That lawsuit was dismissed with prejudice, and plaintiff's appeal of that ruling was dismissed because plaintiff's notice of appeal was premature, depriving the appeals court of jurisdiction. *See Chambers v. Costello*, No. 3-16-0144, 2017 WL 1195999 (Ill. App. Ct. March 30, 2017).

Federal courts must give state court judgments the same preclusive effect as the court rendering the judgment. *Haber v. Biomet, Inc.*, 578 F.3d 553, 556 (7th Cir. 2009). Illinois law bars an action under the doctrine of *res judicata* when there was a prior lawsuit in which: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) involving the

same parties or their privies, and (3) constituting the same cause of action as the current suit. Nowak v. St. Rita High School, 757 N.E.2d 471, 477 (Ill. 2001).

Plaintiff's complaint and appeals court ruling in *Chambers v. Costello*, No. 3-16-0144, 2017 WL 1195999, of which the court takes judicial notice¹, make plain that plaintiff's Illinois lawsuit reached a final judgment on the merits involving the same parties. To the extent that plaintiff asserts any different theories of relief in this case (under § 1983, rather than state law, for example), this does not preclude the application of *res judicata*. Illinois applies a transactional analysis to determine whether claims constitute the same cause of action for *res judicata* purposes, in which claims are considered to be the same cause of action if the same operative facts give rise to the claims. See *Arlin-Golf, LLC v. Vill. of Arlington Heights*, 631 F.3d 818, 821-22 (7th Cir. 2011) (application of *res judicata* appropriate under Illinois law where both complaints relied on the same facts, although the legal theories differed). The court therefore determines that this case and the state court case constitute the same cause of action. Plaintiff "cannot use a new lawsuit to contend that the disposition of the first was mistaken." *Hudson v. Hedge*, 27 F.3d 274, 276 (7th Cir. 1994).

Clerk denied to file Second Appeal Notice

Although *res judicata* is an affirmative defense, the court may raise it when it is clear from the face of the complaint that the suit is frivolous. See *Gleash v. Yuswak*, 308 F.3d 758, 760-761 (7th Cir. 2002); see also *Walker v. Thompson*, 288 F.3d 1005, 1009-10 (7th Cir. 2002) (dismissal on the basis of an affirmative defense prior to service is appropriate when "the validity of the defense [is] apparent from the complaint itself . . . and unmistakable, so that the suit is fairly describable as frivolous."). Because it is clear from the face of the complaint that *res judicata* bars this action, it is dismissed as frivolous.

The court further observes that dismissal of this lawsuit is appropriate as a sanction for plaintiff's failure to fully and properly disclose his litigation history, including the fact that he had "struck out" under 28 U.S.C. § 1915(g). That provision of the Prison Litigation Reform Act ("PLRA") provides that a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* "if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Plaintiff has a lengthy litigation history. He has accumulated at least three strikes: *Chambers v. Conard*, No. 13-cv-0186 (S.D. Iowa), dismissed as frivolous by order of May 16, 2013; *Chambers v. Sepanek*, No. 17-cv-0146 (E.D. Ky.), dismissed for failure to state a claim by order of May 11, 2018; and *Chambers v. Sarcone*, No. 17-cv-0432 (S.D. Iowa), dismissed as frivolous by order of December 20, 2017. Although the enumerated strikes vary somewhat, plaintiff recently was advised that he "struck out" in two cases. See *Chambers v. Santana*, No.

¹ Courts may take judicial notice pursuant to FED R. EVID. 201(b) of matters of public record, including the contents of court records. See *General Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081 (7th Cir. 1997).

18-cv-820 (N.D. Texas), order of April 6, 2018, and *Chambers v. Laske* (C.D. Calif.), No. 18-cv-3470, order of June 28, 2018.

“A litigant who knows that he has accumulated three or more frivolous suits or appeals must alert the court to that fact.” *Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008) (citing *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999)). Failure to do so will result in termination of the case as a sanction for misconduct. *Id.* (citing *Campbell v. Clarke*, 481 F.3d 967 (7th Cir. 2007)). Additionally, the United States Court of Appeals for the Seventh Circuit has affirmed the dismissal of a case for failure of the *pro se* prisoner plaintiff to disclose his litigation history when that failure is material and intentional, and thus amounts to a fraud on the court. *See Hoskins v. Dart*, 633 F.3d 541, 543-44 (7th Cir. 2011).

Notwithstanding this, plaintiff moved for leave to proceed *in forma pauperis* without informing the court that he had “struck out.” In so moving, plaintiff provided a list of his previously filed cases that is incomplete. (See IFP application, [2-1], at pp. 1-2.) Specifically, plaintiff’s disclosures do not include: *Chambers v. Sepanek*, No. 17-cv-0146 (E.D. Ky.), dismissed for failure to state a claim by order of May 11, 2018; *Chambers v. Hardy*, No. 17-cv-0161 (W.D. Ky.), transferred to the Eastern District of Kentucky by order of September 20, 2017, where it became *Chambers v. Hardy*, No. 17-cv-0256 (E.D. Ky.), pending (neither disclosed); *Chambers v. Allen*, No. 17-cv-0996 (S.D. Ill.), pending; *Chambers v. Herrera*, No. 17-cv-2564 (C.D. Calif.), pending; *Chambers v. Laske* (C.D. Calif.), No. 18-cv-3470, dismissed with prejudice by order of July 12, 2018; *Chambers v. Ebbert*, No. 18-cv-1009 (M.D. Pa.), pending; and *Chambers v. Ebbert*, 18-cv-1207 (M.D. Pa.), pending.

After listing several, but not all, of his cases, plaintiff included this statement: “I was not dismissed as frivolously but for the case in Iowa, where the judge had personal reasons[;] I am not an attorney.” (See IFP application, [2-1], at p. 2.) It is unclear to which case he is referring, as plaintiff has had two cases from the Southern District of Iowa dismissed as frivolous. Regardless, even if plaintiff genuinely believes that he has not “struck out,” he was obligated to accurately and completely disclose his litigation history and explain his reasons for that belief.

Plaintiff’s complaint also contains an inaccurate and incomplete disclosure of his litigation history. The complaint form that plaintiff used (apparently from the Central District of Illinois) warned plaintiff that the “three strikes rule” bars a prisoner from bringing a civil action *in forma pauperis* if, while incarcerated, he has had three or more cases dismissed as frivolous, malicious, or for failure to state a claim. (See [1], at p. 3.) The form also required plaintiff to disclose how many federal lawsuits he had filed while incarcerated, and to provide some basic information about each case. (*Id.*) Again, plaintiff inaccurately stated that he had filed seven federal lawsuits, when in reality he has filed at least fifteen. (*Id.*)

Consequently, this lawsuit is properly dismissed not only as frivolous, but as a sanction for misconduct. *See Ammons*, 547 F.3d at 725; *see also Sloan*, 181 F.3d at 859 (“fraud” on the court must “lead to immediate termination of the suit”).

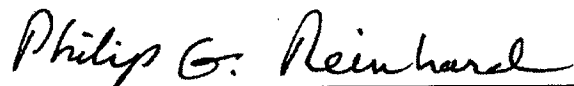
However, having brought this action, plaintiff remains obligated to pay the full \$400.00 filing fee. See 28 U.S.C. § 1915(b)(1); *Sloan*, 181 F.3d at 859. The court authorizes and orders the trust fund officer at plaintiff's place of incarceration to use the mechanism set forth in 28 U.S.C. § 1915(b)(2) to collect monthly payments from his trust fund account in an amount equal to 20% of the preceding month's income credited to the account. Monthly payments collected from plaintiff's trust fund account shall be forwarded to the Clerk of Court each time the amount in the account exceeds \$10 until the full \$400 filing fee has been paid. All payments shall be sent to the Clerk of Court, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify plaintiff's name and the case number assigned to this action. This payment obligation will follow plaintiff wherever he may be transferred. The Clerk of Court is directed to send a copy of this order to the trust fund officer at USP Lewisburg. Before pursuing any future litigation, plaintiff must pay any outstanding fees. All other pending motions are denied as moot.

Final judgment will be entered. If plaintiff wishes to appeal, he must file a notice of appeal with this court within thirty days of the entry of judgment. See FED. R. APP. P. 4(a)(1). If plaintiff appeals, he will be liable for the \$505.00 appellate filing fee regardless of the appeal's outcome. See *Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). If the appeal is found to be non-meritorious, plaintiff could be assessed a "strike" under 28 U.S.C. § 1915(g). If plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* in this court. See FED. R. APP. P. 24(a)(1).

Plaintiff need not bring a motion to reconsider this court's ruling to preserve his appellate rights. However, if plaintiff wishes the court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. See FED. R. CIV. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. See FED. R. CIV. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. See FED. R. APP. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. See FED. R. CIV. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. See FED. R. CIV. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. See FED. R. APP. P. 4(a)(4)(A)(vi).

Date: 08/14/2018

ENTER:



United States District Court Judge

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Roscoe Chambers (13495-030),)	
)	
Plaintiff,)	Case No. 18 C 50242
)	App. Ct. Case No. 18-3309
v.)	
)	
Kris Schmidts, et al.,)	Judge Philip G. Reinhard
)	
Defendants.)	

ORDER

Plaintiff's application for leave to appeal *in forma pauperis* [19] is denied pursuant to 28 U.S.C. § 1915(g) as plaintiff has "struck out" and has not alleged any imminent danger. The court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that this appeal is not taken in good faith. Plaintiff must pay the \$505.00 appellate filing fee within 14 days. If he fails to do so, the Court of Appeals may dismiss his appeal for want of prosecution. The Clerk of Court is directed to send a copy of this order to the Clerk for the United States Court of Appeals for the Seventh Circuit.

STATEMENT

Plaintiff Roscoe Chambers, a federal prisoner confined at USP Lewisburg, brought this *pro se* civil rights lawsuit pursuant to 42 U.S.C. § 1983. Plaintiff alleged that officials in Whiteside County maliciously prosecuted him for driving under the influence.

As stated in this court's August 14, 2018, order, this lawsuit was dismissed because plaintiff's complaint was plainly barred by res judicata and because plaintiff failed to fully and accurately disclose his litigation history, including the fact that he has "struck out" pursuant to 28 U.S.C. § 1915 (g). See [6].

As stated in that order, plaintiff had accumulated at least three strikes: *Chambers v. Conard*, No. 13-cv-0186 (S.D. Iowa), dismissed as frivolous by order May 16, 2013; *Chambers v. Sepanek*, No. 17-cv-0146 (E.D. Ky.), dismissed for failure to state a claim by order of May 11, 2018; and *Chambers v. Sarcone*, No. 17-cv-0432 (S.D. Iowa), dismissed as frivolous by order of December 20, 2017. Although the enumerated strikes vary somewhat, plaintiff recently was advised that he "struck out" in two cases. See *Chambers v. Santana*, No. 18-cv-820 (N.D. Texas), order of April 6, 2018, and *Chambers v. Laske* (C.D. Calif.), No. 18-cv-3470, order of May 11, 2018. Subsequent to the filing of this lawsuit, plaintiff incurred another "strike" in *Chambers v. Laske* (C.D. Calif.), No. 18-cv-3470, which was dismissed for failure to state a claim by order of July 12, 2018. He also incurred a strike for filing this frivolous lawsuit.

The Prison Litigation Reform Act provides in relevant part that a prisoner may not bring a civil action or appeal a civil judgment "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Plaintiff has moved to appeal *in forma pauperis* but has not filed a properly completed application on this court's required form. Further, he has not brought forth any argument as to why the provisions of

§ 1915(g) should not apply, other than the fact that he is indigent. *See* [19]. His complaint, which was an improper attempt to re-litigate claims already decided in state court, did not involve any allegations of “imminent danger of serious physical injury,” so as to provide an exception to the requirement that he pre-pay the filing fee under § 1915(g).

In addition, for the reasons stated in the court’s order dismissing plaintiff’s complaint and assessing a strike, the court certifies pursuant to 28 U.S.C. § 1915(a)(3) that this appeal is not in good faith, and no appeal should be taken. If the basis of the appeal is frivolous, meaning that no reasonable person could believe his claim has merit, *see Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000), then the appeal is not taken in good faith (even if the appellant sincerely believes in its merits). “An appeal is frivolous when the result is obvious or when the appellant’s argument is wholly without merit.” *Smeigh v. Johns Manville, Inc.*, 643 F.3d 554, 565 (7th Cir. 2011) (citation and internal quotation marks omitted).

Accordingly, plaintiff is ordered to remit the \$505.00 appellate filing fee to the District Court Clerk within 14 days of the date of this order. If plaintiff fails to comply, the Court of Appeals may dismiss his appeal. Plaintiff is responsible for ensuring payment of the filing fee as directed by this order and should ensure that the institution having custody of him transmits the necessary funds. The obligation to ensure full payment of the filing fees imposed by this order shall not be relieved by release or transfer to another facility.

Payments shall be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier’s Desk, 20th Floor, and should clearly identify plaintiff’s name and the district court and appellate court case numbers assigned to this action. If plaintiff wants to contest this court’s denial of his application for leave to appeal *in forma pauperis*, he must file a motion with the Court of Appeals seeking review of this order within 30 days of service of this order. *See* FED. R. CIV. P. 24(a)(5). The Clerk of Court is directed to send a copy of this order to the Clerk for the United States Court of Appeals for the Seventh Circuit.

Date: 11/15/2018

ENTER:

A handwritten signature in black ink, reading "Philip G. Reinhard". The signature is written in a cursive, flowing style. It is positioned above a horizontal line.

United States District Court Judge

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**Additional material
from this filing is
available in the
Clerk's Office.**