

# UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
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## PLRA C.R. 3(b) FINAL ORDER

October 16, 2020

No. 20-2022	KEVIN L. MARTIN, Plaintiff - Appellant  v.  ASHLYNN LEDFORD, Defendant - Appellee
<b>Originating Case Information:</b>	
District Court No: 2:19-cv-00201-JRS-DLP Southern District of Indiana, Terre Haute Division District Judge James R. Sweeney	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on August 25, 2020 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).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

KEVIN L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:19-cv-00201-JRS-DLP
	)	
ASHLYNN LEDFORD,	)	
	)	
Defendant.	)	

**ORDER VACATING APPOINTMENT OF COUNSEL  
AND ISSUING SANCTIONS AND TEMPORARY FILING BAN**

Kevin Martin is a frequent litigator in this court. He recently "struck out" pursuant to 28 U.S.C. § 1915(g), having filed three or more meritless lawsuits in federal court. This means Mr. Martin may not file any new civil rights lawsuits unless he either pays the full \$400 filing fee or demonstrates that he is in imminent danger of serious physical injury. *See Martin v. Meeks, et al.*, 2:18-cv-00395-JMS-DLP, dkt. 186 (order issuing third strike, listing previous two strikes, and explaining consequences to Mr. Martin). He continues to have nine cases pending in this district.

Recent actions by Mr. Martin against his previously appointed counsel in another case lead the Court to conclude that it cannot appoint counsel to represent Mr. Martin in this case.

For the reasons explained below, the Court finds that in addition to striking out for future cases, Mr. Martin should be sanctioned, by way of a fine, for harassing appointed counsel in *Martin v. Nicholson*, 2:18-cv-00391-MJD-JMS. Until he pays the fine, the Clerk of the Court is ordered to return unfiled any papers Mr. Martin submits to this Court, with the exception of appeal documents and habeas cases.

**I.  
Background**

Since 2018, Mr. Martin has filed a dozen civil rights cases in this Court. He has also filed cases in the Northern District of Indiana and in Indiana state court. When litigating a case pro se, Mr. Martin engages in aggressive motion practice. For example, in *Martin v. Meeks, et al.*, 2:18-cv-00395-JMS-DLP, Mr. Martin filed eight motions to compel, along with several motions to clarify, motions for subpoenas, "good faith" letters, and other filings all between February 26, 2019, and June 18, 2019. He took a similar approach to litigating his other cases in this Court, thereby straining judicial resources. This conduct, along with Mr. Martin's complaints that arthritis in his hand hindered his ability to litigate his cases, led the Court to issue orders in all of Mr. Martin's civil rights cases—apart from the case discussed above where he proceeded with appointed counsel—forbidding Mr. Martin from filing most motions unless he had previously been authorized by the Court to file them. *See* 2:18-cv-00395-JMS-DLP, dkt. 120. The Court allowed Mr. Martin to file a monthly agenda in each case, listing the issues he wanted to discuss at monthly telephonic status conferences. Even after the Court instituted this process, Mr. Martin persisted in filing unauthorized motions. *See* 2:18-cv-00395-JMS-DLP, dkt. 150. In this case, Mr. Martin has filed four unauthorized motions. Dkts. 28, 29, 34, and 78, terminated at dkts. 30, 37, and 83. He has also filed numerous submissions, notices, and letters in addition to his monthly agendas.

The Court previously appointed counsel for Mr. Martin in *Martin v. Nicholson*, 2:18-cv-00391-MJD-JMS. After counsel ably represented him throughout the entire course of litigation, Mr. Martin filed a notice of tort claim alleging that appointed counsel had committed malpractice. *Id.* at dkt. 190. The Court has concluded that Mr. Martin's notice of tort claim is frivolous and intended to harass his pro bono counsel. Dkt. 92.

Mr. Martin's attack on his pro bono attorneys not only burden his counsel unnecessarily, they also harm the Court's pro bono program, which expends considerable efforts to recruit counsel, and other pro se litigants seeking the assistance of counsel. One barrier to recruiting attorneys to volunteer is the false perception that pro se prisoner litigants are vexatious and likely to file a frivolous suit against their pro bono attorney. Mr. Martin's actions reinforce this perception and make it more difficult for the Court to recruit attorneys to assist other pro se litigants.

## II. Vacating Appointment of Counsel

On May 1, 2020, the Court denied Mr. Martin's motion to appoint counsel because it did not acknowledge the conditions of the appointment of counsel. Dkt. 88. Although Mr. Martin has not filed a renewed motion for counsel, and although litigants in federal civil cases do not have a constitutional or statutory right to court-appointed counsel, *Walker v. Price*, 900 F.3d 933, 938 (7th Cir. 2018), counsel was appointed in this action on May 12, 2020. Now, because Mr. Martin has harassed competent counsel previously appointed by the Court, the Order of Recruitment of Counsel in this case, dkt. [91], is **VACATED**.

## III. Sanctions

"District courts 'possess certain inherent powers, not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That authority includes the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" *Fuery v. City of Chicago*, 900 F.3d 450, 452 (7th Cir. 2018) (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 137 S.Ct. 1178, 1186 (2017)) (internal citations omitted). Such sanctions can include monetary fines and the imposition of a filing bar to restrict a plaintiff's ability to file new lawsuits. *See Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995) (filing bar

imposed on pro se party who continued to file false evidence and did not respond to monetary sanctions). A filing bar, however, must be tailored to the misconduct. *Henry v. United States*, 360 F. App'x 654, 656 (7th Cir. 2010).

Mr. Martin has demonstrated that he is using litigation for the purpose of harassment. In this case, sanctions combining a monetary fine with a temporary filing ban is appropriate. The Court considered lesser sanctions but concludes that they would not be effective for at least two reasons. First, the Court's previous attempt at limiting Mr. Martin's excessive motion practice was relatively ineffective. Second, since he recently struck out, he is already prevented from filing new cases unless he can either pay the \$400 filing fee or demonstrate that he is in imminent danger of serious physical harm. A filing bar that only blocked the filing of new cases would not materially change Mr. Martin's already limited ability to file new cases.

A temporary filing ban is required in conjunction with a monetary fine because Mr. Martin is proceeding *in forma pauperis* in all his cases in this Court. He likely has little ability to pay a fine, and even less incentive to do so. *See Mack*, 45 F.3d at 185 (noting that pro se plaintiffs litigating in bad faith often ignore monetary sanctions).

The Court considered and decided against the more severe sanctions of dismissing Mr. Martin's pending civil rights cases, either with or without prejudice. The intermediate sanction of a monetary fine and temporary filing ban gives Mr. Martin an opportunity to continue litigating if he pays the fine. In recognition of his limited means, the Court imposes a lesser fine than would be imposed in cases not involving an indigent inmate.

#### **IV. Conclusion**

The Court sanctions Mr. Martin with a fine of Five-Hundred Dollars (\$500). Until he pays this fine, **the Clerk of this Court is ORDERED** to return unfiled any papers in civil litigation that

Mr. Martin submits to this Court, with the exception of a Notice of Appeal and habeas cases. *See Thelen v. Cross*, 656 Fed. Appx. 778 (7th Cir. 2016) (imposing filing ban and citing *Mack*, 45 F.3d 185). After two years, Mr. Martin may seek modification or rescission of this Order. *Mack*, 45 F.3d at 187 ("Perpetual orders are generally a mistake.").

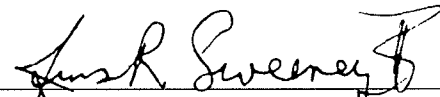
The **clerk is directed** to route any future civil rights complaint from Mr. Martin in which he alleges imminent danger of serious physical injury to chambers for review. Such lawsuits will be deemed rejected, without the need for judicial action, on the 30th day following receipt, unless the Court orders otherwise. *See Dallas v. Gamble*, 448 F. Supp. 2d 1020, 1027–28 (W.D. Wis. 2006).

The **clerk is directed** to docket this Order in each of Mr. Martin's other eight pending civil rights cases:

2:18-cv-385-JPH-DLP  
2:19-cv-134-JRS-DLP  
2:19-cv-268-JRS-DLP  
2:19-cv-279-JPH-DLP  
2:19-cv-280-JRS-DLP  
2:19-cv-298-JRS-DLP  
2:19-cv-552-JRS-DLP  
2:19-cv-559-JRS-DLP

**IT IS SO ORDERED.**

Date: 6/3/2020

  
\_\_\_\_\_  
JAMES R. SWEENEY II, JUDGE  
United States District Court  
Southern District of Indiana

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