

Appendix "B"

United States Court of Appeals
for the Fifth Circuit

No. 22-20166

United States Court of Appeals
Fifth Circuit

FILED

May 12, 2022

Lyle W. Cayce
Clerk

MICHAEL G. PETERS,

Plaintiff—Appellant,

versus

ANDREW S. HANEN,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-802

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of May 12, 2022, for want of prosecution. The appellant failed to timely pay the filing fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit



By: _____
Rebecca L. Leto, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Appendix A

United States District Court
Southern District of Texas

ENTERED

March 18, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL G. PETERS, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. 4:22-CV-00802
§
ANDREW S. HANEN, §
§
Defendant. §

ORDER OF DISMISSAL

Michael G. Peters is an inmate in the Texas Department of Criminal Justice. In this suit under 42 U.S.C. § 1983, he alleges that the defendant, a federal District Judge, participated in a “conspiracy perverting the corse [sic] of justice.” The plaintiff has not paid the filing fee. This action will be dismissed under 28 U.S.C. § 1915(g).

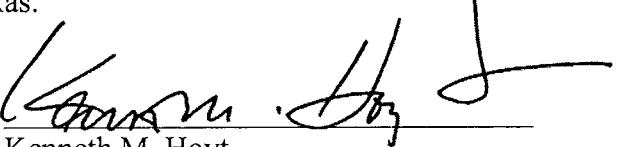
Under the Prison Litigation Reform Act of 1995, a prisoner may not file an action *in forma pauperis* barring a show of imminent danger if he has, on three or more prior occasions, filed a prisoner action in federal district court or an appeal in a federal court of appeals which was dismissed as frivolous or malicious. 28 U.S.C. § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 385 (5th Cir. 1996). Peters had at least 13 such dismissals before filing his complaint in this case, and is no longer allowed to proceed without prepayment of fees. *See Peters v. Abbott*, No. 4:21-cv-3731 (S.D. Tex. Nov. 15, 2021); *Peters v. Texas Department of Criminal Justice*, No. 4:21-cv-3039 (S.D. Tex. Sept. 23, 2021); *Peters v. TDCJ*, No. 4:21-cv-2447 (S.D. Tex. July 29, 2021); *Peters v. Texas Department of Criminal Justice*, No. 3:21-cv-14 (S.D. Tex. Feb. 1, 2021); *Peters v. Texas Medical Board*, 4:15-cv-3021 (S.D. Tex. Oct. 30, 2015); *Peters v. Rollins*, 4:15-cv-3036 (S.D. Tex. Oct. 27, 2015); *Peters v. Valigura*, 4:15-cv-3023 (S.D. Tex. Oct. 26, 2015); *Peters v.*

Duckworth, 4:15-cv-3024 (S.D. Tex. Oct. 22, 2015); *Peters v. Harrison*, 4:15-cv-3037 (S.D. Tex. Oct. 19, 2015); *Peters v. BB&T Bank*, No. 4:15-cv-3035 (S.D. Tex. Oct. 15, 2015); *Peters v. Dreyer*, 4:15-cv-2899 (S.D. Tex. Oct. 14, 2015); *Peters v. Dreyer*, 4:15-cv-2900 (S.D. Tex. Oct. 6, 2015); *Peters v. Gilbert*, 4:15-cv-2762 (S.D. Tex. Oct. 1, 2015). Peters's allegations do not plead any facts showing that he is in any immediate danger which would warrant waiver of the fee requirement. *See Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

In light of the pleadings and Peters' litigation history, Peters fails to show that he is eligible to proceed *in forma pauperis*. Consequently, this action is **dismissed** pursuant to 28 U.S.C. § 1915(g). This dismissal counts as a strike under section 1915(g).

It is so ORDERED.

SIGNED on March 18, 2022, at Houston, Texas.



Kenneth M. Hoyt
Kenneth M. Hoyt
United States District Judge

United States District Court
Southern District of Texas

ENTERED

February 18, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL G. PETERS,
TDCJ # 02019190, *et al.*,

Plaintiffs,

VS.

LEE H ROSENTHAL,

Defendant.

CIVIL ACTION NO. H-22-00312

ORDER OF DISMISSAL

State inmate Michael G. Peters (TDCJ #02019190) filed this complaint under 42 U.S.C. § 1983 against another federal district judge, alleging that she is aiding a national crime enterprise in Texas.¹ He moves to proceed *in forma pauperis* in this proceeding. Doc. No. 2. Because the plaintiff is an inmate who proceeds *in forma pauperis*, the Court is required by the Prison Litigation Reform Act (the “PLRA”) to scrutinize the complaint and dismiss the case, in whole or in part, if it determines that the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2)(B).

¹ Peters attempts to join his minor child in this action as another plaintiff. However, as explained in *Peters v. Atlas*, Civ. A. No. H-22-080 (S.D. Tex. Jan. 13, 2022), a minor cannot proceed *pro se* and Peters may not represent him even as Next Friend. See *id.* (citing cases). Therefore, Peters is the sole plaintiff in this case and cannot circumvent the PLRA by attempting to add his minor child to this action. See *id.*

I. DISCUSSION

Peters sues Lee H. Rosenthal, the Chief Judge of the United States District Court for the Southern District of Texas, who presided over several of his frivolous cases and/or dismissed his claims without prejudice under 28 U.S.C. § 1915(g). He seeks \$20 million in personal injury damages. Doc. No. 1 at 4.

Judges are generally immune from damages and suit for their actions completed in their official capacities. *See Stump v. Sparkman*, 435 U.S. 349, 364 (1978); *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). The doctrine of absolute judicial immunity protects judges not only from liability, but also from suit. *Mireles v. Waco*, 502 U.S. 9, 10 (1991). Allegations of bad faith do not overcome judicial immunity, *id.*, and neither do allegations of procedural errors. *See Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991). Judicial immunity is overcome only when the complained-of acts were not taken in the judge's judicial capacity or when they were taken in the complete absence of all jurisdiction. *Mireles*, 502 U.S. at 11-12.

Peters alleges that Judge Rosenthal and others unite to cover up a Texas racketeering organization and join other district judges by citing the "bogus" three-strike rule under 28 U.S.C. § 1915(g), among other things. Peters's allegations against Judge Rosenthal concern her judicial actions and adverse decisions in his cases. Because Peters's claims against Judge Rosenthal relate to actions undertaken in the exercise of her judicial function, she is immune from suit, and his claim against her must be dismissed.

II. **ORDER**

Based on the foregoing, the Court **ORDERS** as follows:

1. This case is **DISMISSED** with prejudice as frivolous.
2. Peters's motion to proceed *in forma pauperis* (Doc. No. 2) is **GRANTED**, and he is assessed an initial partial filing fee of **\$60.66**. Thereafter, Plaintiff shall pay the remainder of the \$350.00 filing fee in periodic installments as required by 28 U.S.C. § 1915(b). The TDCJ Inmate Trust Fund shall collect 20% of each month's deposits from his trust account and forward it to the Clerk **until the full filing fee is paid**.
3. Any and all other pending motions are **DENIED as MOOT**.
4. This dismissal counts as a "strike" under 28 U.S.C. § 1915(g).

The Clerk will send a copy of this order to the parties and to: (1) the TDCJ Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, by email at ctfcourt.collections@tdcj.texas.gov for the collection of the filing fee as set forth above; and (2) the Manager of the Three-Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, this 15th day of February 2022.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE