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

ORDER

August 14, 2023

Before
MICHAEL B. BRENNAN, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

No. 23-1947	RUSSELL G. FINNEGAN, Plaintiff - Appellant v. DAVID L. CHIDESTER, Defendant - Appellee
Originating Case Information:	
District Court No: 3:23-cv-00309-JD-JEM Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio	

The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on June 23, 2023, by the pro se appellant.

2. **MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on June 23, 2023, by the pro se appellant.

Upon consideration of appellant's motions, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in bad faith, and the record on appeal,

IT IS ORDERED that the motion for leave to proceed in forma pauperis on appeal is **DENIED**. *See Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). Appellant Russell Finnegan has not identified a good faith issue that the district court erred in dismissing his complaint or not giving him an opportunity to file an amended complaint. Finnegan shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b). *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

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PLRA C.R. 3(b) FINAL ORDER

October 6, 2023

No. 23-1947	RUSSELL G. FINNEGAN, Plaintiff - Appellant v. DAVID L. CHIDESTER, Defendant - Appellee
Originating Case Information:	
District Court No: 3:23-cv-00309-JD-JEM Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on September 6, 2023 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).

form name: c7_PLRA_3bFinalOrder (form ID: 142)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RUSSELL GRANT FINNEGAN,

Plaintiff,

v.

DAVID CHIDESTER,

Defendant.

CAUSE NO. 3:23-CV-309-JD-JEM

OPINION AND ORDER

Russell Grant Finnegan, a prisoner without a lawyer, filed a complaint. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, under 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. The court is permitted to take judicial notice of the public records and dockets of other courts in determining whether the complaint states a claim. *See* Fed. R. Evid. 201 and *Tobey v. Chibucos*, 890 F.3d 634, 647–48 (7th Cir. 2018); *see also Olson v. Champaign Cnty., Ill.*, 784 F.3d 1093, 1097 n.1 (7th Cir. 2015) ("As a general rule, we may take judicial notice of public records not attached to the complaint in ruling on a motion to dismiss under Rule 12(b)(6)"). Notably, a plaintiff can plead

himself out of court if he pleads facts that preclude relief. *See Edwards v. Snyder*, 478 F.3d 827, 830 (7th Cir. 2007); *McCready v. Ebay, Inc.*, 453 F.3d 882, 888 (7th Cir. 2006).

Here, Finnegan alleges he filed a civil tort claim against his former attorney Jay T. Hirschauer in state court cause number 66C01-2211-CT-000033 in the Pulaski Circuit Court in Pulaski County, Indiana on November 28, 2022. The next day, Judge Mary C. Welker recused herself from the case, and the day after that, the new judge who had been assigned, Judge Crystal A. Kocher, did the same. On January 11, 2023, Magistrate John A. Link of the LaPorte Superior Court #4 accepted the appointment to the case as a special judge. On January 12, 2023, Special Judge Link assigned the case to Senior Judge David Chidester. Senior Judge Chidester proceeded to rule against Finnegan on several matters, and he ultimately dismissed the case. Finnegan claims he did so without jurisdiction or authority and in violation of his constitutional due process rights because Senior Judge Chidester is "not a duly elected or appointed judge of any court or a duly appointed judge pro tempore or special judge," because he was not listed as an eligible special judge pursuant to the Pulaski County Local Rules, and because he was "allowed only by the Indiana State Supreme Court to serve in LaPorte County." ECF 1 at 2-3. He seeks a preliminary and permanent injunction to prevent Senior Judge Chidester from serving as a judge "in any state court case that I have filed or may file in the future." *Id.* at 4. He also seeks "punitive and exemplary" damages. *Id.*

Overall, Finnegan is unhappy that Senior Judge Chidester ruled against him in the state court civil proceedings. However, "[a] judge has absolute immunity for any judicial actions unless the judge acted in absence of all jurisdiction." *Polzin v. Gage*, 636

F.3d 834, 838 (7th Cir. 2011); *see also John v. Barron*, 897 F.2d 1387, 1391 (7th Cir. 1990) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.") (citing *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)). There is no question that ruling on motions and dismissing a case are judicial acts. *John*, 897 F.2d at 1392 ("[A] judge who assigns a case, considers pretrial matters, and renders a decision acts well within his or her judicial capacity."). Thus, the only issue here is whether Senior Judge Chidester lacked all jurisdiction to do so.[1]

The use of senior judges has been approved by the Indiana Supreme Court and by Indiana statute. As explained by the Indiana Office of Judicial Administration:

> In 1989, the legislature authorized the creation of the Senior Judge program allowing Indiana courts to use the services of retired or former judges to supplement existing judicial resources (IC 33-23-3-1). As envisioned, courts now use senior judges as a replacement in the absence of a regular judge, as a complement to the regular judge or to oversee the processing of certain types of cases or court programs.

See https://www.in.gov/courts/admin/senior-judges/ (last visited April 27, 2023). A senior judge "exercises the jurisdiction granted to the court served by the senior judge." IC 33-23-3-3(a)(1). A senior judge appointed to serve in a

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[1] Finnegan does not allege that the recusal and reassignments of the first three judges were improper, nor could he. Judge Welker recused herself pursuant to Rule 1.2 of the Indiana Code of Judicial Conduct to "avoid impropriety and the appearance of impropriety" because she was "the victim in Superior Court Case 66D01-20005-F5-000010 involving Russell G. Finnegan with a No Contact Order in [the] mentioned case." *See generally Finnegan v. Hirschauer*, cause no. 66C01-2211-CT-000033, Pulaski Circuit Court (filed Nov. 29, 2022), available at: https://public.courts.in.gov/mycase (last visited April 27, 2023). The case was then reassigned to Judge Kocher pursuant to the Pulaski Superior Court Local Rules and Trial Rule 79, but she declined the appointment because Finnegan had previously "expressed his concern of bias" and had named her as a defendant in a separate pending matter. *See id.*; *see also* LR66-TR79-01, available at: https://www.in.gov/courts/files/pulaski-local-rules.pdf (last visited on April 27, 2023). Accordingly, the Pulaski County Clerk of Court appointed Special Judge Link pursuant to the rotating list of judicial officers delineated in the Local Rules—which includes the "LaPorte Superior Court Magistrate." *See id.*

county that has a superior court judge "may, with the consent of . . . any judge of a superior court in the county, sit as the judge of the consenting judge's court in any matter as if the senior judge were the elected judge or appointed judge of the court." IC 33-23-3-3(b)(3). Indiana Court Administrative Rule 5(B)(1) provides that the Indiana Supreme Court may appoint all senior judges certified by the Judicial Nominating Commission to serve in the Court of Appeals, the Tax Court, a circuit court, a superior court, or a probate court. *See* https://www.in.gov/courts/rules/admin/ (last visited April 27, 2023). The specific Indiana Supreme Court order appointing senior judges for 2023 indicates that "all" such senior judges are authorized to serve in "any" of those courts throughout Indiana. *See* https://www.in.gov/courts/files/order-judges-2022-22S-MS-437.pdf (last visited April 27, 2023). Moreover, LaPorte Superior Court #4 is authorized to use fifty-five senior judge days during 2023 "without any additional request to [the Indiana Supreme Court]." *See id.* Indiana Court Administrative Rule 5(B)(4) discusses the procedure for using senior judges, noting that a presiding judge must issue an order providing the name of the senior judge, the day(s) and service hours the judge will be conducting business, and a verification that the senior judge does not practice law in that court. *See* https://www.in.gov/courts/rules/admin/ (last visited April 27, 2023). Once that order is filed, a senior judge "retains jurisdiction in an individual case on the order of the presiding judge of the court in which the case is pending." *Id.*

David Chidester was initially certified as a senior judge by the Indiana Supreme Court pursuant to IC 33-27-4-1 on December 10, 2020, effective January 1, 2021. *See* https://www.in.gov/courts/files/order-judges-2020-20S-MS-675.pdf (last visited April 27, 2023). He was most recently recertified on December 20, 2023, which is valid through the end of this year. *See* https://www.in.gov/courts/files/order-judges-2022-22S-MS-417.pdf (last visited April 27, 2023). As noted above, that recertification from the Indiana Supreme Court authorized him to serve on "any circuit, superior, or probate court during 2023." *See* https://www.in.gov/courts/files/order-judges-2022-22S-MS-437.pdf (last visited April 27, 2023). Pursuant to Indiana Court Administrative Rule 5(B)(4), Special Judge Link issued an order in cause number 66C01-2211-CT-000033 on January 12, 2023, naming Senior Judge Chidester as the presider in that matter. *See generally Finnegan v. Hirschauer*, cause no. 66C01-2211-CT-000033, Pulaski Circuit Court (filed Nov. 29, 2022), available at: https://public.courts.in.gov/mycase (last visited April 27, 2023). The order indicates Senior Judge Chidester is to serve on the case during regular business hours of the court, that he verified in writing he does not practice law before the court, and that the order was entered into the record of judgments and orders. *Id.*[2] As such, Finnegan's claims that Senior Judge Chidester acted

[2] Of note, naming a senior judge to preside over a case comports with the caseload allocation plan found in the LaPorte County Circuit and Superior Courts Local Rule of Practice and Procedure LR 46 – AR 1(E). *See* https://www.in.gov/courts/files/laporte-local-rules.pdf (last visited April 27, 2023) ("Efforts to reduce caseload disparity shall include requests to the Indiana Supreme Court for the appointment of present Senior Judges to serve various courts of La Porte County, as opposed to a singular designated court."); *see also* https://www.in.gov/courts/files/order-local-rules-2022-22S-MS-456.pdf (last visited April 25, 2023) (Indiana Supreme Court Order Approving Amended Local Rules for LaPorte County regarding caseload allocation, effective Jan. 1, 2023).

without any jurisdiction are flatly contradicted by the public record. Thus, he cannot obtain monetary damages from Senior Judge Chidester for issuing orders in his case because he is immune from such liability, and Finnegan's injunctive relief claims are likewise without merit.[3]

"The usual standard in civil cases is to allow defective pleadings to be corrected, especially in early stages, at least where amendment would not be futile." *Abu-Shawish v. United States*, 898 F.3d 726, 738 (7th Cir. 2018). However, "courts have broad discretion to deny leave to amend where . . . the amendment would be futile." *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009). For the reasons previously explained, such is the case here.

For these reasons, this case is DISMISSED pursuant to 28 U.S.C. § 1915A. The clerk is DIRECTED to close this case.

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[3] Moreover, even if there was a technical defect in the appointment order(s), a violation of state law appointment requirements would not form the basis for a federal constitutional claim.

> The *de facto* officer doctrine confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment or election to office is deficient. The de facto doctrine springs from the fear of the chaos that would result from multiple and repetitious suits challenging every action taken by every official whose claim to office could be open to question, and seeks to protect the public by insuring the orderly function of the government despite technical defects in title to office. The doctrine has been relied upon by this Court in several cases involving challenges by criminal defendants to the authority of a judge who participated in some part of the proceedings leading to their conviction and sentence.

Ryder v. United States, 515 U.S. 177, 180-81 (1995) (quotation marks and citations omitted); *see also Vargas v. Cook County Sheriff's Merit Bd.*, 952 F.3d 871, 873 (7th Cir. 2020) (citing to the *de facto* officer doctrine with approval and noting that "[a] violation of state law is not a federal due-process violation, so the defect in the Board's membership is not a basis for a federal constitutional claim"). Thus, applying the *de facto* officer doctrine, even if Senior Judge Chidester was improperly appointed or the order naming him as presider contained technical defects, there is no valid federal constitutional basis for Finnegan to challenge the legitimacy of his appointment here.

SO ORDERED on April 27, 2023

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RUSSELL GRANT FINNEGAN,

Plaintiff,

v.

DAVID CHIDESTER,

Defendant.

CAUSE NO. 3:23-CV-309-JD-JEM

ORDER

Russell Grant Finnegan, a prisoner without a lawyer, filed a motion to appeal in forma pauperis. ECF 9. Under the Prison Litigation Reform Act (PLRA), prisoners may proceed in forma pauperis if it is properly alleged they cannot pay the fees in a lawsuit. 28 U.S.C. § 1915. The PLRA requires a prisoner to "'submit[ ] an affidavit that includes a statement of all assets such prisoner possesses' and 'a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint.'" *Reyes v. Fishel*, 996 F.3d 420, 424 (7th Cir. 2021) (citing 28 U.S.C. § 1915(a)). Finnegan has not submitted a copy of his trust fund account statement, so the motion can be denied on that basis alone.

Even if he had submitted the statement, however, the motion would still be denied because "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Finnegan's complaint was dismissed pursuant to 28 U.S.C. § 1915A. *See generally* ECF 4. He sued Senior Judge David Chidester for ruling against him in his state court civil proceedings,

but this court determined Senior Judge Chidester is entitled to judicial immunity. *See Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011) ("A judge has absolute immunity for any judicial actions unless the judge acted in absence of all jurisdiction."). Although Finnegan alleged Senior Judge Chidester lacked jurisdiction to preside over his case, this allegation is flatly contradicted by the public record. *See* ECF 4 at 3–6. In his current motion, Finnegan claims Ind. Code § 33-23-3-1, which is related to the application for senior judge appointments, is unconstitutional and that "David Chidester is not a judge and is not sued in any official capacity and is not immune to suit." ECF 9 at 2. However, for the reasons set forth in detail in the dismissal order, the court certifies, in writing, that this appeal is not taken in good faith.

For these reasons, the motion to appeal in forma pauperis (ECF 9) is DENIED.

SO ORDERED on May 22, 2023

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT

United States Court OF Appeals For the Seventh Circuit

Russell G. Finnegan Plaintiff - Appellant V. David L. Chidester Defendant - Appelle	No. 23-1947

Memorandum In Support OF Motion For Leave To Proceed On Appeal IN Forma Pauperis

Comes now, I the Appellant Russell Grant Finnegan pro se moves this Court For order allowing him to proceed in this cause in Forma pauperis to prosecute his appeal without being required to prepay Fees, casts or to give security thereof before or after bringing these proceedings. In support Appellant states the following contending the district courts denial is erroneous and this appeal is brought in good Faith.

1. I did not submit a trust Fund statement with the correct motion and affidavit to proceed on appeal in Forma pauperis to the district court, or a docketing statement.

2. Overall I could have done a better job pleading my original complaint in the district court and if given an opportunity to amend it I would have and feel that Hukic V. Aurora Loan Servs., 588 F.3d 726, 738 (7th Cir. 2018) was used out of context to disallow me an opportunity to amend my complaint. Hukic is a case being dismissed

(1.)

after plaintiff amended his complaint and was try to amend it for the second time.

I also Feel Abu-Shawish v. United States, 898 F.3d 726, 738 (7th Cir. 2018) was taken and used wholly out of context and should have weighed in my favor of an opportunity to amend my complaint holding in whole; the usual standard in civil cases is to allow defective pleadings to be corrected, especially in early stages, at least where amendment would not be futile. That is the ordinary practice in an ordinary civil case where the party is represented by counsel. When the party is pro se, the liberal approach to amending pleadings applies with even more force. The liberal standard for amending under Fed. R. Civ. P. 15(a)(2) is especially important where the law is uncertain. While truly futile amendments need not be allowed, a district judge who believes a pleading has a fatal but possible curable flaw needs to identify it and give the pleading party a fair opportunity to try to correct it.

3. I Feel the district court misused judical notice inappropreatly to dismiss my complaint, not allow me an opportunity to amend and tried to use public record at its finger tips with electronic machinery to give David Chidester default immunity. Tobey v. Chibucos, 890 F.3d 634, 647-48 (7th Cir. 2018) is a case speaking of dismissal on a motion for Fed. R. Civ. P. 12(b)(6) with a partial holding used against me, here it is in whole; although a court may generally take judicial notice of public records, under Fed. R. Evid. 201, a court may judicially notice only a fact that is not subject to reasonable

dispute. A motion under Fed. R. Civ. P. 12(b)(6) can be based only on the complaint itself, documents attached to the complaint, documents that are critical to the complaint and referred to in it, and information that is subject to proper judicial notice. Judicial notice is a powerful tool that must be used with caution. I found no holding in the opion of Olson v. Champaign Cnty., Ill, 784 F.3d 1093, 1097 n.1. (7th Cir. 215) that speaks anything of Fed. R. Evid. 201. and know not why it is cited. Perhaps it is a mistake, but if David Chidester was recertified as a special judge on Dec. 20, 2023, that day has yet to come and would be impossible till it does.

I understand that as a pro se prisioner that I am subject to screening of my complaint to the PLRA. I contend the PLRA is not to be used to place the court into the position of the defendant to do an independent investigation and fact find to come in conflict and spoil the role of referee. I contend that public records can not by themselves speak to the court and confer subject matter jurisdiction upon it to empower it to act, needing a competent witness before it to do so, and will further contend that order of dismissal is void without any fact properly before the court that is in dispute of my claim.

4. The public record that the district court used to give David Chidester immunity from suit does not show the facts and circumstances of how David Chidester acted in absence of all jurisdiction to vidate my 1st, 5th and 14th amendment rights. My contention with David Chidester is the omission of a judicial act not the preformance of one and also his capacity and jurisdiction, by me taking in good faith to

challenge Indiana's senior judge statute I.C. 33-23-3-1 of it being unconstitutional violating U.S. Const. Art. IV Sec. 4 guaranteeing a republican form of government. I contend David Chidester does not qualify for the privilage of immunity per authorities set fourth in Stump v. Spackman, 435 U.S. 349, 359 (1978) and Lopez v. Vanderwater, 620 F.2d 1229 (7th Cir 1980), John v. Barron 897 F.2d 1387 (7th Cir. 1990). I contend this process not be easy or difficult but will require the tool of discovery, and argue Mireles v. Waco, 502 U.S. 9 (1991), like all forms of immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existance of which ordinarily cannot be resolved without engaging in discovery and eventual trial.

5. I contend overall the district court is in error of not allowing me to proceed on appeal and that my appeal is taken in all the good faith that I have in my elementary civics lesson and finally will rest that I should have been given an opportunity to amend my complaint with, Scheuer v. Rhodes 416 U.S. 232 (1974) When a federal court reviews the sufficiency of a complaint, before the reception of any evidence iether by affidavit or admissions, its task is ~~ness~~ necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is intitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that recovery is very remote and unlikely but that is not the test.

Wherefore; the Appellant prays the Court an order allowing him to proceed in this cause on appeal in Forma pauperis without being required to prepay fees, costs or to give security thereof before or after bringing these proceedings.

Russell G. Finnegan

Russell G. Finnegan

6-15-23

§ 1915. Proceedings in forma pauperis

(a) (1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by

statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate [United States magistrate judge] in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title [28 USCS § 636(b)] or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title [28 USCS § 636(c)]. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e) (1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f) (1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2) (A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

HISTORY:

June 25, 1948, ch 646, 62 Stat. 954; May 24, 1949, ch 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch 655, § 51 (b), (c), 65 Stat. 727; Sept. 21, 1959, P. L. 86-320, 73 Stat. 590; Oct. 10, 1979, P. L. 96-82, § 6, 93 Stat. 645; April 26, 1996, P. L. 104-134, Title I [Title VIII, § 804(a), (c)–(e)], 110 Stat. 1321-73, 1321-74; May 2, 1996, P. L. 104-140, § 1(a), 110 Stat. 1327.