

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

February 5, 2018

Before

DIANE P. WOOD, *Chief Judge*
WILLIAM J. BAUER, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*

No. 17-3094	YAROSLAV S. SKLYARSKY, Plaintiff - Appellant v. CHARLES P. KOCORAS, Defendant - Appellee
Originating Case Information:	
District Court No: 1:17-cv-05427 Northern District of Illinois, Eastern Division District Judge Harry D. Leinenweber	

The following are before the court:

1. PLAINTIFF-APPELLANT MOTION TO PROCEED IN FORMA PAUPERIS (IFP) AND MOTION TO EXTEND TIME TO FILE BRIEF, filed on November 7, 2017, by pro se Yaroslav S. Sklyarsky.
2. BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT, YAROSLAV S. SKLYARSKY, filed on January 16, 2018, by pro se Yaroslav S. Sklyarsky.

This court has carefully reviewed the final order of the district court, the record on appeal, the appellant's motion to proceed in forma pauperis, and the appellant's brief and short appendix. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. See *Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be not assist the court and no member of the panel desires briefing or argument). In this suit, Yaroslav Sklyarsky complained that the district court's procedural rulings, as well as its factfinding and legal decisions, in his previous employment discrimination case against his former employer were intentionally false and were made to favor his former employer. As the district court held, Sklyarsky's allegations relate only to judicial acts, and judges are not liable in civil actions for acts within the judge's jurisdiction for acts performed in the judge's judicial capacity. See *Mireles v. Waco*, 502 U.S. 9, 10-12 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006). To the extent that any claims did not relate to judicial acts, such claims would be time-barred as filed beyond the applicable two-year statute of limitations. Sklyarski argues on appeal that he did not discover that the district court's rulings were unconstitutional until recently when he conducted research, but this argument is insufficient to toll the statute of limitations. This court affirmed the district court's decision in Sklyarsky's prior case and thoroughly addressed this case. Even if there were a claim that was not related to the district court's judicial acts, which he did not allege in his complaint, Sklyarsky should have known of any claims when the opinion issued in January 2015. See *Sklyarsky v. Means-Knaus Partners, L.P.*, 777 F.3d 892 (7th Cir. 2015).

Accordingly, **IT IS ORDERED** that the motion to proceed in forma pauperis is **DENIED**, and the judgment of the district court is summarily **AFFIRMED**.

Appendix B

App. 3a

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

YAROSLAV S. SKLYARSKY,

Plaintiff,

v.

CHARLES P. KOCORAS, U.S.
District Court Judge for
the Northern District of
Illinois,

Defendant.

Case No. 17 C 5427

Judge Harry D. Leinenweber

ORDER

Plaintiff Yaroslav S. Sklyarsky's Application for Leave to Proceed *in Forma Pauperis* [ECF No. 4] and Motion for Attorney Representation [ECF No. 5] are denied as moot. Plaintiff's Complaint is dismissed with prejudice.

STATEMENT

In evaluating an application for leave to proceed *in forma pauperis*, the Court screens the underlying complaint to determine whether the action is frivolous or malicious, or should be dismissed for failure to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e); see also, *Rowe v. Shake*, 196 F.3d 778, 783 (7th Cir. 1999).

On July 25, 2017, Plaintiff Yaroslav S. Sklyarsky ("Sklyarsky") filed a "Complaint about Deprivation of Federal Constitutional Rights ('Biven' Action) under 28 U.S.C. § 1331 and Violation of 42 U.S.C. § 1985(3)," naming Judge Charles Kocoras as the sole defendant. (ECF No. 1 ("Compl.")). Sklyarsky's Complaint is a 46-page tome that

challenges Judge Kocoras's substantive and procedural rulings in a stale case Sklyarsky filed against his erstwhile employer, Harvard Maintenance, for discrimination on account of national origin. See, generally, *Yaroslav S. Sklyarsky v. Harvard Maintenance Inc.*, Case No. 1:13-cv-859 (N.D. Ill.). On appeal, the Seventh Circuit affirmed Judge Kocoras's grant of summary judgment to Harvard Maintenance, noting that "any procedural missteps were harmless." See, *Yaroslav S. Sklyarsky v. Harvard Maintenance Inc.*, No. 14-2768, slip op. at 3 (7th Cir. Jan. 29, 2015). Nonetheless, Sklyarsky claims in this case that Judge Kocoras violated his "Oaths of Judge" under Article VI of the U.S. Constitution and conspired to violate his civil rights guaranteed by the First and Fourteenth Amendments. (Compl. at 45-46.) He asks the Court to issue various "declarations" of illegality with respect to Judge Kocoras's conduct and also prays for compensatory and punitive damages.

The United States Supreme Court has consistently held that, short of "a clear absence of all jurisdiction," judges are absolutely immune from damages lawsuits arising out of their judicial acts - even when those acts violate clearly established judicial procedures. See, e.g., *Mireles v. Waco*, 502 U.S. 9, 10-12 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356-58 (1978). Specifically, the Seventh Circuit has upheld judicial immunity for a judge sued in a damages lawsuit alleging a civil rights conspiracy arising out of the judge's official duties. See, e.g., *Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006) ("Of course [the plaintiff's] claims against the judges are barred; she is complaining about their judicial conduct, and they have absolute immunity from such damages

claims.") (citations omitted). And nothing in Sklyarsky's Complaint suggests that Judge Kocoras lacked jurisdiction to hear the case; rather, "it is clear from [the] complaint that [Judge Kocoras] performed his allegedly wrongful acts in the course of his duties as a judge." *Horton v. Marovich*, 925 F.Supp. 532, 539 (N.D. Ill. 1996). Allowing a plaintiff's allegations of procedural misconduct and pernicious conspiracy - without more - to satisfy the "clear absence of all jurisdiction" exception to immunity would swallow the rule. See, e.g., *Lopez v. Vanderwater*, 620 F.2d 1229, 1234 (7th Cir. 1980) ("Even 'grave procedural errors,' however, are not enough, under *Sparkman*, to deprive a judge of all jurisdiction. Malice and corruption are similarly insufficient.") (internal citations omitted). So much for Sklyarsky's claim for compensatory and punitive damages.

But what of Sklyarsky's requests for various "declarations" - that, for example, Judge Kocoras violated the "Oaths of Office" and conspired to deprive Sklyarsky of his civil rights? As a general matter, judges are not immune from declaratory relief. Yet it is available against a judge only where a live case or controversy exists. See, e.g., *Robinson v. City of Chicago*, 868 F.2d 959, 966-67 (7th Cir. 1989) (finding that the declaratory judgment statute requires an actual controversy). In this case, there is no live controversy to substantiate a declaratory judgment; any allegedly unconstitutional conduct affecting Sklyarsky would not have persisted beyond July 15, 2014, when Judge Kocoras granted summary judgment to Harvard Maintenance. (Indeed, the case's docket sheet contains no district court entries subsequent to July 15, 2014.) Judge Kocoras's conduct towards Sklyarsky is not

ongoing, nor does Sklyarsky allege that he is likely to appear before Judge Kocoras in the future. See, e.g., *Crenshaw v. Dywan*, 34 F.Supp.2d 707, 713 (N.D. Ind. 1999) ("In this case, the proceedings before Judge Dywan have concluded, and Crenshaw does not allege that Judge Dywan's illegal conduct towards her still occurs. As a result, any federal claims for declaratory relief against Judge Dywan are moot."). Because courts do not issue advisory opinions that speak only to "abstract questions or issues framed for the purpose of invoking the advice of the court," *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74 (1927), nothing justiciable remains for the Court to declare. As such, Sklyarsky's claims for declaratory relief are dismissed as moot.

In any event, the foregoing may be much ado about nothing; Sklyarsky's claims are time-barred. Illinois's two-year statute of limitations on injuries to person "applies to claims under § 1983 and § 1985(3)." *Wilson v. Giesen*, 956 F.2d 738, 741 n.4 (7th Cir. 1992). Such is also the case for *Bivens* actions. See, e.g., *King v. One Unknown Federal Correctional Officer*, 201 F.3d 910, 913 (7th Cir. 2000) ("The statute of limitations for . . . *Bivens* actions is determined by the statute of limitations for personal injury actions in the state where the incident forming the basis of the claim occurred."); *Perkins-Alexander v. Sanchez*, 16 Fed.Appx. 484, 486 (7th Cir. 2001) (applying two-year Illinois personal injury statute of limitations to *Bivens* action). Because Sklyarsky's soi-disant *Bivens* claim and 42 U.S.C. § 1985(3) cause of action accrued when Sklyarsky "discovered or by the exercise of due diligence would have discovered" the basis for Judge Kocoras's rulings, *U.S. v. Duke*, 229 F.3d

App. 7a

627, 730 (7th Cir. 2000), they accrued long before July 25, 2015 - that is, long before two years prior to when Sklyarsky filed his Complaint in this case. (Recall that the Seventh Circuit affirmed Judge Kocoras on January 29, 2015.)

For the reasons stated above, Sklyarsky's Complaint is dismissed with prejudice for failure to state a claim under FED. R. Civ. P. 12(b)(6). His Application for Leave to Proceed in *Forma Pauperis* [ECF No. 4] and Motion for Attorney Representation [ECF No. 5] are denied as moot.



Harry D. Leinenweber, Judge
United States District Court

Dated: September 18, 2017

App. 2a

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Yaroslav S. Sklyarsky,

Plaintiff(s),

v.

Charles P. Kocoras, U.S. District Judge for the
Northern District of Illinois.

Defendant(s).

Case No. 17 C 5427

Judge Harry D. Leinenweber

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of \$

which ☐ includes pre-judgment interest.
☐ does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: this complaint is dismissed with prejudice for failure to state a claim.

This action was (check one):

- ☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Harry D. Leinenweber on a motion

Date: 9/18/2017

Thomas G. Bruton, Clerk of Court

Wanda Parker, Deputy Clerk