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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DUNCAN MCNEIL,

Plaintiff,

vs.

ROBERT WHALEY, et al.,

Defendants.

NO. CV-04-371-AAM

ORDER DENYING *IN FORMA PAUPERIS*
STATUS AND DISMISSING COMPLAINT
WITH PREJUDICE

1915 (g)

Plaintiff, a prisoner at the Spokane County Jail brings this pro se civil rights complaint pursuant to 42 U.S.C. §§ 1983, 1981, 1985(3), 12132, 2000e-2, and 2000e-5, RCW 49.60.180, 210, 215, and RCW 9.91.010(2). Named defendants are a United States District Court Judge, a United States Magistrate Judge, a Clerk of Court/District Court Executive, two United States Bankruptcy Judges, and a Clerk of Court for a United States Bankruptcy Court.

By this action, plaintiff seeks to enjoin any orders issued by the named judicial officers. Plaintiff is advised this court lacks jurisdiction to grant such relief. His additional requests for declaratory relief are unclear. Plaintiff appears to challenge actions related to bankruptcy proceedings in California and Washington, as well as proceedings in the courts of Washington State,

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1 including child custody matters.

2 A review of court documents¹ reveal the United States Bankruptcy
3 Court of the Central District of California has declared Mr. McNeil to
4 be a vexatious litigant. See cause number CA-00-02379-SB, Order
5 entered November 2, 2000. The United States Bankruptcy Court for the
6 Eastern District of Washington restricted Mr. McNeil's filings on
7 February 21, 2002. See cause number 01-06073-W11. By Order filed
8 September 9, 2002, the Spokane County Superior Court determined Mr.
9 McNeil was a vexatious litigant; quashed his "Writs of Obedience";
10 barred him from submitting further filings related to case number LA
11 98-18082-SB, absent a \$20,000 bond and compliance with filing
12 provisions set forth in that Order; and restricted him from
13 communicating with the court or the staff of the Clerk of the Court
14 via telefax or e-mail.

15 In this action, Mr. McNeil seeks leave to proceed *in forma*
16 *pauperis*. After review of his submissions, however, the court finds
17 this action is frivolous, malicious, and/or fails to state a claim
18 upon which relief may be granted, and therefore, *in forma pauperis*
19 status is **DENIED**.

22
23 ¹Judicial notice may be taken of court records. *Valerio v. Boise*
24 *Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff'd*, 645
25 F.2d 699 (9th Cir. 1981). See also *Mir v. Little Company of Mary*
26 *Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial
27 notice of its own files).

1 PRISON LITIGATION REFORM ACT

2 Under the Prison Litigation Reform Act of 1995, the court is
3 required to screen complaints brought by prisoners seeking relief
4 against a governmental entity or officer or employee of a governmental
5 entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or
6 portion thereof if the prisoner has raised claims that are legally
7 "frivolous or malicious," that fail to state a claim upon which relief
8 may be granted, or that seek monetary relief from a defendant who is
9 immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2);
10 See *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

11 A claim is legally frivolous when it lacks an arguable basis
12 either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
13 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
14 The court may, therefore, dismiss a claim as frivolous where it is
15 based on an indisputably meritless legal theory or where the factual
16 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The
17 critical inquiry is whether a constitutional claim, however inartfully
18 pleaded, has an arguable legal and factual basis. See *Jackson v.*
19 *Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at
20 1227.

21 A complaint, or portion thereof, will be dismissed for failure to
22 state a claim upon which relief may be granted if it appears beyond
23 doubt Plaintiff can prove no set of facts in support of the claim or
24 claims that would entitle him to relief. See *Hishon v. King &*
25 *Spalding*, 467 U.S. 69, 73 (1984), citing *Conley v. Gibson*, 355 U.S.
26 41, 45-46 (1957); see also *Palmer v. Roosevelt Lake Log Owners Ass'n*,

1 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
2 this standard, the court must accept as true the allegations of the
3 complaint in question, *Hospital Bldg. Co. v. Rex Hospital Trustees*,
4 425 U.S. 738, 740 (1976), construe the pleading in the light most
5 favorable to Plaintiff, and resolve all doubts in Plaintiff's favor.
6 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). On the basis of these
7 standards, Plaintiff's present allegations are frivolous, malicious,
8 and/or fail to state a claim upon which relief can be granted.

9 Plaintiff sets forth his "Statement of Claim" in "Exhibit A."
10 Plaintiff has filed this exhibit in numerous actions in this court.
11 It deals with Bankruptcy proceedings from the Central District of
12 California, case number LA 98-18082-SB, in which Mr. McNeil was once
13 approved as the "Debtor's General Manager" and "Disbursing Agent."

14 This document, however, does not set forth a factual basis for a
15 cognizable claim in this court. See Fed. R. Civ. P. 8(a).

16 Furthermore, it violates pleading requirements as set forth in LR
17 10.1(a)(2), Local Rules for the Eastern District of Washington.

18 Plaintiff presents no facts from which the court could infer
19 named defendants acted under color of state law as required for a
20 claim under 42 U.S.C. § 1983. *Leer v. Murphy*, 844 F.2d 628, 632-33
21 (9th Cir. 1988). Furthermore, a judge is generally immune from a
22 civil action for damages. *Mireles v. Waco*, 502 U.S. 9, 9 (1991). "The
23 judicial or quasi-judicial immunity available to federal officers is
24 not limited to immunity from damages, but extends to actions for
25 declaratory, injunctive and other equitable relief." *Mullis v.*
26 *Bankruptcy Court for the District of Nevada*, 828 F.2d 1385, 1394 (9th

1 Cir. 1987). Plaintiff has alleged no facts which would lower the
2 shield of absolute judicial immunity. *Stump v. Sparkman*, 435 U.S.
3 349, 356 (1978).

4 Plaintiff also fails to present any facts from which the court
5 could infer a violation under the Americans with Disability Act (ADA).
6 42 U.S.C. § 12132. The ADA prohibits public entities from excluding
7 the disabled from participating in or benefitting from a public
8 program, activity, or service "solely by reason of disability."
9 *Weinreich v. Los Angeles County Metro. Transp. Auth.*, 114 F.3d 976,
10 978-79 (9th Cir. 1997). Plaintiff presents no facts from which the
11 court could infer he was denied services "solely by reason of [his]
12 disability." He has not stated a violation of the ADA against any of
13 the named defendants. 42 U.S.C. § 12132.

14 After review of Mr. McNeil's submissions, the court finds
15 amendment would be futile. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th
16 Cir. 1987). The court notes Mr. McNeil has filed over fourteen
17 actions since October 14, 2004, naming hundreds of defendants and
18 failing to present specific allegations. The court finds Mr. McNeil's
19 submissions abusive of the judicial process. *Chambers v. NASCO, Inc.*,
20 501 U.S. 32, 44-45 (1991). A sanction of fees or threatening
21 incarceration would be unavailing.

22 For the reasons set forth above, **IT IS ORDERED** the complaint is
23 **DISMISSED with prejudice** as frivolous, malicious, and/or for failure
24 to state a claim upon which relief may be granted. 28 U.S.C. §§
25 1915A(b) (1), (2) and 1915(e) (2)

26 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
27 ORDER DENYING *IN FORMA PAUPERIS* STATUS AND
28 DISMISSING COMPLAINT WITH PREJUDICE -- 5

1 prisoner who brings three or more civil actions or appeals which are
2 dismissed as frivolous, malicious, or for failure to state a claim
3 will be precluded from bringing any other civil action or appeal in
4 *forma pauperis* "unless the prisoner is under imminent danger of
5 serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised
6 to read the new statutory provisions under 28 U.S.C. § 1915. This
7 dismissal of Plaintiff's complaint may count as one of the three
8 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his
9 ability to file future claims.

10 IT IS SO ORDERED. The District Court Executive is directed to
11 enter this Order, forward a copy to Plaintiff at his last known
12 address, enter judgment, and close the file. The District Court
13 Executive is further directed to forward a copy of this Order to the
14 Office of the Attorney General of Washington, Criminal Justice
15 Division.

16 DATED this 9th day of November 2004.

17
18 S/ Alan A. McDonald

19 ALAN A. McDONALD
20 SENIOR UNITED STATES DISTRICT JUDGE
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