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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK RICHARD O'DELL,)	1:06-cv-00658-OWW-SMS
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	APPLICATION FOR LEAVE TO PROCEED
)	IN FORMA PAUPERIS (DOC. 1)
v.)	
)	ORDER DISMISSING PLAINTIFF'S
INYO CO. SHERIFFS DEPT.,)	COMPLAINT WITH LEAVE TO FILE A
et al.,)	FIRST AMENDED COMPLAINT NO LATER
)	THAN THIRTY DAYS AFTER THE DATE
Defendants.)	OF SERVICE OF THIS ORDER
)	
)	

Plaintiff is proceeding pro se with an action for injunctive relief concerning alleged civil rights violations; the action was transferred to the Court on May 30, 2006. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

I. Application to Proceed in Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

II. Screening the Complaint

A. Legal Standard

1 In cases wherein the plaintiff is proceeding in forma
2 pauperis, the Court is required to screen cases and shall dismiss
3 the case at any time if the Court determines that the allegation
4 of poverty is untrue, or the action or appeal is frivolous or
5 malicious, fails to state a claim on which relief may be granted,
6 or seeks monetary relief against a defendant who is immune from
7 such relief. 28 U.S.C. 1915(e)(2).

8 Fed. R. Civ. P. 8(a) provides:

9 A pleading which sets forth a claim for relief,
10 whether an original claim, counterclaim, cross-
11 claim, or third-party claim, shall contain
12 (1) a short and plain statement of the grounds
13 upon which the court's jurisdiction depends,
14 unless the court already has jurisdiction and
15 the claim needs no new grounds of jurisdiction
to support it, (2) a short and plain statement
of the claim showing that the pleader is entitled
to relief, and (3) a demand for judgment for
the relief the pleader seeks. Relief in the
alternative or of several different types
may be demanded.

16 A complaint must contain a short and plain statement as required
17 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a
18 flexible pleading policy, a complaint must give fair notice and
19 state the elements of the claim plainly and succinctly. Jones v.
20 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

21 Plaintiff must allege with at least some degree of particularity
22 overt acts which the defendants engaged in that support
23 Plaintiff's claim. Id. Although a complaint need not outline all
24 elements of a claim, it must be possible to infer from the
25 allegations that all elements exist and that there is entitlement
26 to relief under some viable legal theory. Walker v. South Cent.
27 Bell Telephone Co., 904 F.2d 275, 277 (5th Cir. 1990); Lewis v.
28 ACB Business Service, Inc., 135 F.3d 389, 405-06 (6th Cir. 1998).

1 In reviewing a complaint under this standard, the Court must
2 accept as true the allegations of the complaint in question,
3 Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740
4 (1976), construe the pro se pleadings liberally in the light most
5 favorable to the Plaintiff, Resnick v. Hayes, 213 F.3d 443, 447
6 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor,
7 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

8 If the Court determines that the complaint fails to state a
9 claim, leave to amend should be granted to the extent that the
10 deficiencies of the complaint can be cured by amendment. Lopez v.
11 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A
12 complaint, or a portion thereof, should only be dismissed for
13 failure to state a claim upon which relief may be granted if it
14 appears beyond doubt that the Plaintiff can prove no set of
15 facts, consistent with the allegations, in support of the claim
16 or claims that would entitle him to relief. See Hishon v. King &
17 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355
18 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt Lake Log
19 Owners' Ass'n., Inc., 651 F.2d 1289, 1294 (9th Cir. 1981).
20 Dismissal of a pro se complaint for failure to state a claim is
21 proper only where it is obvious that the Plaintiff cannot prevail
22 on the facts that he has alleged and that an opportunity to amend
23 would be futile. Lopez v. Smith, 203 F.3d at 1128.

24 A claim is frivolous if it lacks an arguable basis either in
25 law or fact. Neitzke v. Williams, 490 U.S. 319, 324 (1989). A
26 frivolous claim is based on an inarguable legal conclusion or a
27 fanciful factual allegation. Id. A federal court may dismiss a
28 claim as frivolous if it is based on an indisputably meritless

1 legal theory or if the factual contentions are clearly baseless.

2 Id.

3 The test for malice is a subjective one that requires the
4 Court to determine whether the applicant is proceeding in good
5 faith. Kinney v. Plymouth Rock Squab. Co., 236 U.S. 43, 46
6 (1915); see Wright v. Newsome, 795 F.2d 964, 968 n. 1 (11th Cir.
7 1986). A lack of good faith is most commonly found in repetitive
8 suits filed by plaintiffs who have used the advantage of cost-
9 free filing to file a multiplicity of suits. A complaint may be
10 inferred to be malicious if it suggests an intent to vex the
11 defendants or abuse the judicial process by relitigating claims
12 decided in prior cases, Crisafi v. Holland, 655 F.2d 1305, 1309
13 (D.C.Cir. 1981); if it threatens violence or contains
14 disrespectful references to the Court, id.; or if it contains
15 untrue material allegations of fact or false statements made with
16 knowledge and an intent to deceive the Court, Horsev v. Asher,
17 741 F.2d 209, 212 (8th Cir. 1984).

18 B. Plaintiff's Complaint

19 Plaintiff seeks an order directing a grand jury
20 investigation into "sex crimes committed by sworn officers
21 (a.k.a.) engineered deviorces that result in bodley harm or
22 death" that he alleges occurred in Independence, California; he
23 also seeks damages for himself and his children. (Cmplt. at 2.)
24 He refers to the provision of convicted felons for "entrapment
25 schemes," and he refers to conduct of his wife or ex-wife (status
26 unclear) in 2001 involving her making large sums of money in a K-
27 Mart store and possibly pictures of her conduct being down-loaded
28 to pornographic web sites from police or sheriff's computers. He

1 alleges that he caught a sexually transmitted disease in 2001. He
2 refers to unspecified sex crimes committed by unidentified
3 members of the police department of the city of Bishop as well as
4 the Inyo County Sheriff's Office. Plaintiff also refers to his
5 ex-wife's having resorted to domestic violence as a means of
6 evicting him, without due process of law, from his home, which
7 was being bought pursuant to a H.U.D. housing contract in
8 connection with the Bishop Indian Housing Authority. Plaintiff
9 names as Defendants the Inyo County Sheriff's Department and its
10 child support division;¹ a retired district attorney, Phil
11 McDowell; and an Assistant District Attorney Christensen.

12 C. Analysis

13 Plaintiff does not allege specific facts or otherwise
14 provide a short and plain statement of grounds for jurisdiction
15 in this Court.

16 Further, Plaintiff does not provide a short and plain
17 statement of his claims. Indeed, his complaint is so vague and
18 rambling that it is not possible to determine whether Plaintiff's
19 claim is frivolous, malicious, or states a claim for relief.
20 Although the Federal Rules adopt a flexible pleading policy, a
21 complaint must give fair notice and state the elements of the
22 claim plainly and succinctly. Jones v. Community Redev. Agency,
23 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at
24 least some degree of particularity overt acts which the
25 defendants engaged in that support Plaintiff's claim. Id.

26 The Civil Rights Act under which this action was filed

27
28 ¹It appears from Plaintiff's application to proceed in forma pauperis that he owes the Inyo County Sheriff's Department Child Support Division the sum of \$36,000.00.

1 provides:

2 Every person who, under color of [state law]...
3 subjects, or causes to be subjected, any citizen of the
4 United States... to the deprivation of any rights,
5 privileges, or immunities secured by the
6 Constitution... shall be liable to the party injured in
7 an action at law, suit in equity, or other proper
8 proceeding for redress.

9 42 U.S.C. § 1983. To state a claim pursuant to § 1983, a
10 plaintiff must plead that defendants acted under color of state
11 law at the time the act complained of was committed and that the
12 defendants deprived the plaintiff of rights, privileges, or
13 immunities secured by the Constitution or laws of the United
14 States. Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir.
15 1986).

16 Here, Plaintiff has failed plainly to indicate the precise
17 conduct of any individual or entity. Further, it is possible that
18 the prosecutor defendants are entitled to immunity. However,
19 because Plaintiff's allegations are so unclear, it is not
20 possible to determine whether the persons named as defendants are
21 entitled to immunity and thus that the claim is frivolous or
22 fails to state a claim.

23 Plaintiff has failed to state facts indicating that
24 Defendants acted under color of state law. Plaintiff has failed
25 to specify the precise conduct that is the basis for his claim
26 and how that conduct resulted in a deprivation of any federally
27 protected rights.

28 In summary, the Court finds it necessary to dismiss the
complaint in its entirety. Plaintiff has failed to state a
cognizable claim against the Defendants and has failed to plead
facts demonstrating jurisdiction in this Court. However, it is

1 possible that Plaintiff can allege a set of facts, consistent
2 with the allegations, in support of the claim or claims that
3 would entitle him to relief. Thus, the Court will grant Plaintiff
4 an opportunity to amend the complaint to cure the deficiencies of
5 this complaint. Failure to cure the deficiencies will result in
6 dismissal of this action without leave to amend.

7 In addition, Plaintiff is informed that the Court cannot
8 refer to a prior pleading in order to make Plaintiff's amended
9 complaint complete. Local Rule 15-220 requires that an amended
10 complaint be complete in itself without reference to any prior
11 pleading. This is because, as a general rule, an amended
12 complaint supersedes the original complaint. See Loux v. Rhay,
13 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended
14 complaint, the original pleading no longer serves any function in
15 the case. Therefore, in an amended complaint, as in an original
16 complaint, each claim and the involvement of each defendant must
17 be sufficiently alleged.

18 In accordance with the above, IT IS HEREBY ORDERED that

19 1) Plaintiff's application to proceed in forma pauperis IS
20 GRANTED; and

21 2) Plaintiff's complaint IS DISMISSED; and

22 3) Plaintiff IS GRANTED thirty days from the date of service
23 of this order to file a first amended complaint that complies
24 with the requirements of the pertinent substantive law, the
25 Federal Rules of Civil Procedure, and the Local Rules of
26 Practice; the amended complaint must bear the docket number
27 assigned this case and must be labeled "First Amended Complaint";
28 failure to file an amended complaint in accordance with this

1 order will be considered to be a failure to comply with an order
2 of the Court pursuant to Local Rule 11-110 and will result in
3 dismissal of this action.

4
5 IT IS SO ORDERED.

6 **Dated: June 8, 2006**
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE