

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLARENCE LEON DEWS,

Plaintiff,

vs.

ASSOCIATE WARDEN T. ARLITZ, *et al.*,

Defendants.

Case No. 1:14-cv-00709-RRB

ORDER DISMISSING COMPLAINT
WITHOUT LEAVE TO AMEND

Clarence Leon Dews, a state prisoner appearing *pro se* and *in forma pauperis*, filed a civil rights complaint under 42 U.S.C. 1983 against numerous officials employed by the California Department of Corrections and Rehabilitation (“CDCR”), the Kern County District Attorney, California Department of Justice, and the California Attorney General. Dews’ complaint arises out of his incarceration at Kern Valley State Prison. Dews is currently incarcerated at California State Prison-Corcoran. The Court dismissed Dews’ original Complaint¹ and his First Amended Complaint,² with leave to amend. Pending before this Court at **Docket 17** is a document that appears to be in the form of an attempt to appeal from, or seek appellate review of, the Order Dismissing First Amended Complaint.³

¹ Docket 12.

² Docket 14.

³ On the caption page, it appears to be a petition for a writ of error addressed to the Ninth Circuit under the all-writs statute, 28 U.S.C. § 1651. The document also reads like an appellate brief, not a complaint.

Prisoner *pro se* pleadings are given the benefit of liberal construction.⁴ While this Court must liberally construe papers filed by *pro se* parties, *pro se* parties must none-the-less follow the applicable rules of practice and procedure.⁵ The document at Docket 17 does not comply with this Court's Order Dismissing the First Amended Complaint; indeed, as noted above, it reads like an appellate brief. Liberally construed, the Court treats it as the functional equivalent of an election not to amend.⁶ Accordingly, this action will be dismissed without leave to amend.⁷

The Court further notes that in the past three and a half years, in addition to this case, Dews has filed 11 cases in this district. The Court takes judicial notice of the dockets in these filings.⁸

1. *Dews v. Superior Court of State of Calif.*, 1:11-cv-02050-BAM: Petition for habeas corpus. Dismissed without prejudice to filing a civil rights action under 42 U.S.C. § 1983. No appeal filed.

⁴ *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Porter v. Ollison*, 620 F.3d 952, 958 (9th Cir. 2010).

⁵ *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants.") (overruled in part on other grounds in *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012) (en banc)).

⁶ In so doing, this Court is giving effect to what appears to be Dews' intent, i.e., to seek appellate review.

⁷ *Cf. Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) ("[W]hen a district court has already granted a plaintiff leave to amend, its discretion in deciding subsequent motions to amend is particularly broad.") (citation and internal quotation marks omitted)).

⁸ Fed. R. Evid. 201.

2. *Dews v. Kern Radiology Med. Group*, 1:12-cv-00242-AWI-MJS: Prisoner civil rights case. Dismissed for failure to state a claim. No appeal filed.
3. *Dews v. County of Kern*, 1:12-cv-00245-AWI-MJS: Prisoner civil rights case. Dismissed for failure to state a claim. Appeal pending before the Ninth Circuit.
- 4.. *Dews v. Brown*, 1:12-cv-00278-AWI-SKO: Prisoner civil rights case. Dismissed for failure to state a claim. Affirmed on appeal.
5. *Dews v. Kern Valley State Prison*, 1:12-cv-00450-AWI-SKO: Petition for habeas corpus. Dismissed without leave to amend. No appeal filed.
6. *Dews v. Chen*, 1:12-cv-01221-RRB: Prisoner civil rights case. Dismissed for failure to exhaust administrative remedies. No appeal filed.
7. *Dews v. California Superior Court, Fresno*, 1:12-cv-01352-AWI-SAB: Petition for habeas corpus. Dismissed for failure to challenge the legality or duration of Dews' confinement. Court of Appeals denied a request for a certificate of appealability.
8. *Dews v. State Water System*, 1:12-cv-01398-RRB: Prisoner civil rights case. Dismissed for failure to exhaust administrative remedies. No appeal filed.
9. *Dews v. Biter*, 1:12-cv-01634-LJO-SAB: Petition for habeas corpus. Dismissed without leave to amend. No appeal filed.
10. *Dews v. Biter*, 1:13-cv-00626-AWI-SKO: Petition for habeas corpus. Dismissed as a successive petition. No appeal filed.
11. *Dews v. Warden, Corcoran State Prison*, 1:14-cv-01113-LJO-MJS: Petition for habeas corpus. Dismissed as a successive petition. No appeal filed.

ORDER

The Complaint on file herein is hereby **DISMISSED** without leave to amend.

It appears from the records of this Court that Dews has filed three or more prior lawsuits that were dismissed for failure to state a cause action. Because it does not appear that Dews is in any imminent danger, he is not entitled to proceed *in forma pauperis*.⁹ Alternatively, this Court, having fully considered the matter finds that reasonable jurists could not disagree with this Court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Accordingly, any appeal would be frivolous or taken in bad faith.¹⁰ Therefore, Dews' *in forma pauperis* status is hereby **REVOKED**.

The Clerk of the Court is directed to enter final judgment accordingly.

WARNING

In the event Dews seeks further review of this matter in the Court of Appeals, he must comply with the Federal Rules of Appellate Procedure and the rules adopted by the Court of Appeals for the Ninth Circuit, including the payment of the filing fee, unless the Court of Appeals grants him leave to proceed *in forma pauperis*.

IT IS SO ORDERED this 19th day of March, 2015.

S/ RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

⁹ 28 U.S.C. § 1915(g); see *Andrews v. King*, 398 F.3d 1113, 1116 (9th Cir. 2005).

¹⁰ 28 U.S.C. § 1915(a)(3); see *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).