

1 P.”). The Federal Rules of Civil Procedure are available online at [www.uscourts.gov/rules-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)
2 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). Under the Federal Rules
3 of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for
4 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
5 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
6 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. (“Rule”) 8(a).
7 Plaintiff’s claims must be set forth simply, concisely and directly. Rule 8(d)(1). Forms are
8 available to help pro se plaintiffs organize their complaint in the proper way. They are available
9 at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at
10 www.uscourts.gov/forms/pro-se-forms.

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
13 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
14 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
15 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327;
16 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at
17 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Pliler,
18 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true, legal conclusions
19 cast in the form of factual allegations, or allegations that contradict matters properly subject to
20 judicial notice. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981);
21 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187
22 (2001).

23 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
24 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
25 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
26 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
27 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
28 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See

1 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

2 A. The Complaint

3 Plaintiff brings suit against two superior court judges from the Superior Court of Fulton
4 County in Atlanta, Georgia. ECF No. 1 at 2. Under “Basis for Jurisdiction” she writes, “Federal
5 Question: 42 USCA 1983 Civil Action for Deprivation of Rights[;] Judicial Immunity does not
6 extend to civil rights actions under this code in seeking prospective injunctive relief against the
7 judicial acts of state court judges. Federal Question 28 USCS 1331 and 28 USCS 1343 Civil
8 Rights and Elective Franchise.”

9 Plaintiff alleges that in July of 2003, divorce proceedings were initiated by the father of
10 her two children. Id. at 3. In fall of 2004, defendant Judge Doris Downs “wrote a letter or decree
11 recusing herself and her influence from the plaintiff’s divorce case.” Id. The case was then
12 “recused by Judge Melvin Westmoreland and transferred into the court of defendant [Judge]
13 Wendy Shoob.” Id. The divorce was settled in February of 2005 and shared custody of the
14 children was awarded. Id. Plaintiff alleges that in April 2005 defendant Shoob called for an
15 emergency hearing, and issued an illegal gag order unlawfully restricting plaintiff’s rights. Id.
16 Defendant Shoob scheduled a follow-up hearing on June 17, 2005. Id. Due to a medical
17 emergency, plaintiff informed the court that she would not be able to attend. Id. Plaintiff states
18 that defendant Shoob was also unable to attend, and instead defendant Downs, “in violation of her
19 earlier decree, unlawfully assumed the position of judge replacing defendant Wendy Shoob.
20 Defendant Doris Downs issued an unlawful, hand-written bench warrant ordering plaintiff’s
21 arrest.” Id. Defendant Downs also gave full custody of the children in question to their father.
22 Id. at 4. Plaintiff was remanded to Fulton County Jail, where she remained for several days
23 without charge, and was ultimately released without charge. Id. Plaintiff seeks judgment against
24 Judge Shoob and Judge Downs for “damages of funds diverted to plaintiff due to unlawful
25 actions,” attorney’s fees, costs of suit, and such other relief as may be just. Id.

26 B. Analysis

27 Plaintiff brings claims against judicial officers that are immune from suit unless they acted
28 clearly without jurisdiction, but does not provide sufficient facts about the underlying action for

1 this court to make a determination as to whether plaintiff can state a claim against the judicially
2 immune defendants.

3 As a general rule, when the plaintiff seeks monetary relief against a state court judge,
4 judicial immunity bars the suit. In re Castillo, 297 F.3d 940, 947 (9th Cir. 2002), as amended
5 (Sept. 6, 2002). In Pulliam v. Allen, the Supreme Court held that judicial immunity did not
6 encompass claims for prospective relief and attorneys' fees against a judge in her judicial
7 capacity. 466 U.S. 522, 541 (1984). This is apparently the precedent on which the plaintiff
8 relies. However, "Pulliam has been partially abrogated by statute: In 1996, Congress enacted the
9 Federal Courts Improvement Act, Pub.L. No. 104-317, 110 Stat. 3847 (1996), which amended §
10 1983 to provide that 'injunctive relief shall not be granted' in an action brought against 'a judicial
11 officer for an act or omission taken in such officer's judicial capacity ... unless a declaratory
12 decree was violated or declaratory relief was unavailable.'" Gonzales-Quezada v. Hayden, No.
13 C09-1469-JCC, 2010 WL 101323, at *2 (W.D. Wash. Jan. 7, 2010). Neither exception seems to
14 apply based on the limited facts plaintiff alleges.

15 In any case, plaintiff does not seek prospective relief. Prospective relief refers to
16 preventing something from happening in the future; here, plaintiff seeks an award of financial
17 damages based on past actions that the defendants took in their judicial capacity. ECF No. 1 at 4.
18 A judicial defendant is absolutely immune from suits seeking monetary damages for acts
19 performed in his or her judicial capacity. Mireles v. Waco, 502 U.S. 9 (1991). Only actions
20 taken in "the complete absence of all jurisdiction" or falling outside of a judge's judicial duties
21 may subject a judge to liability. Id. at 11-12. "In determining judicial immunity, [the Ninth
22 Circuit has] distinguished between acts "in excess of jurisdiction" and acts "in the clear absence
23 of jurisdiction" by looking to the subject-matter jurisdiction of the judge: "[a] clear absence of all
24 jurisdiction means a clear lack of all subject matter jurisdiction." Miller v. Davis, 521 F.3d 1142,
25 1147 (9th Cir. 2008). Nothing in plaintiff's complaint indicates that the defendants acted in
26 complete absence of all jurisdiction. For this reason, plaintiff's complaint, as it stands, is barred
27 by judicial immunity.

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II. AMENDING THE COMPLAINT

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2 If plaintiff chooses to amend the complaint, the amended complaint must allege facts
3 establishing the existence of federal jurisdiction. In addition, it must contain a short and plain
4 statement of plaintiff's claims. The allegations of the complaint must be set forth in sequentially
5 numbered paragraphs, with each paragraph number being one greater than the one before, each
6 paragraph having its own number, and no paragraph number being repeated anywhere in the
7 complaint. Each paragraph should be limited "to a single set of circumstances" where
8 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their
9 complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor
10 (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

11 Plaintiff must avoid excessive repetition of the same allegations. Plaintiff must avoid
12 narrative and storytelling. That is, the complaint should not include every detail of what
13 happened, nor recount the details of conversations (unless necessary to establish the claim), nor
14 give a running account of plaintiff's hopes and thoughts. Rather, the amended complaint should
15 contain only those facts needed to show how the defendant legally wronged the plaintiff.

16 The amended complaint must not force the court and the defendants to guess at what is
17 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
18 (affirming dismissal of a complaint where the district court was "literally guessing as to what
19 facts support the legal claims being asserted against certain defendants"). The amended
20 complaint must not require the court to spend its time "preparing the 'short and plain statement'
21 which Rule 8 obligated plaintiffs to submit." Id. at 1180. The amended complaint must not
22 require the court and defendants to prepare lengthy outlines "to determine who is being sued for
23 what." Id. at 1179.

24 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's
25 amended complaint complete. An amended complaint must be complete in itself without
26 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
27 complaint supersedes the original complaint. See Pacific Bell Tel. Co. v. Linkline
28 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint

1 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &
2 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
3 original complaint, each claim and the involvement of each defendant must be sufficiently
4 alleged.

5 III. PRO SE PLAINTIFF’S SUMMARY


6 Plaintiff’s complaint is being dismissed because it brings suit against two judges who
7 cannot be sued unless they acted in absence of all jurisdiction. This means that they had no
8 power at all to hear the case or grant the kind of relief that they granted. Plaintiff’s complaint
9 alleges that judicial immunity does not apply because plaintiff is seeking prospective relief. First,
10 plaintiff is seeking money damages, and not prospective relief. Second, the “prospective relief”
11 language that plaintiff is relying on no longer applies because of statutory changes, as described
12 above.

13 IV. CONCLUSION

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED.
- 16 2. The complaint (ECF No. 1) is DISMISSED because it names only defendants who are
17 immune from suit.
- 18 3. Plaintiff shall have 30 days from the date of this order to file an amended complaint that
19 names defendants who are amenable to suit, and which complies with the instructions
20 given above. If plaintiff fails to timely comply with this order, the undersigned may
21 recommend that this action be dismissed.

22 DATED: June 20, 2017

23 
24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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