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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY, JR.,
Plaintiff,
v.
YVONNE GONZALEZ ROGERS,
Defendant.

Case No. 16-05483 EJD (PR)
ORDER OF DISMISSAL

Plaintiff, a California state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against the Honorable Judge Yvonne G. Rogers. Plaintiff’s motion for leave to proceed in forma pauperis shall be addressed in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune

1 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
2 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
4 elements: (1) that a right secured by the Constitution or laws of the United States was
5 violated, and (2) that the alleged violation was committed by a person acting under the
6 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

7 **B. Plaintiff’s Claims**

8 Plaintiff is challenging Judge Rogers’ dismissal of a prior § 1983 complaint as
9 untimely and for failing to afford him equitable tolling under state law. (Compl. at 3.)
10 Plaintiff seeks injunctive relief and requests an order directing “Judge Rogers to re-
11 examine her ruling while referring to the California Equitable Tolling Cases and/or that
12 States Equitable Tolling Doctrines and its leading cases on that subject [*sic*].” (*Id.*)

13 A federal judge is absolutely immune from civil liability for acts performed in his
14 judicial capacity and, unlike the judicial immunity available to state judges sued under §
15 1983, a federal judge’s immunity is not limited to immunity from damages, but extends to
16 actions for declaratory, injunctive and other equitable relief. See Moore v. Brewster, 96
17 F.3d 1240, 1243 (9th Cir. 1996); Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385, 1394
18 (9th Cir. 1987) (applying judicial immunity to actions under Bivens), cert. denied, 486
19 U.S. 1040 (1988). This is because if a federal judge violates a litigant’s constitutional
20 rights in a proceeding pending in federal court, Congress has provided carefully structured
21 procedures for taking appeals and for petitioning for extraordinary writs in Title 28 of the
22 United States Code. See id. Here, Plaintiff may not circumvent the appeals process by
23 filing a civil action against Judge Rogers in order to obtain the relief he seeks.
24 Accordingly, this action must be dismissed because Judge Rogers is entitled to immunity
25 for her actions performed in her judicial capacity. See Moore, 96 F.3d at 1243.

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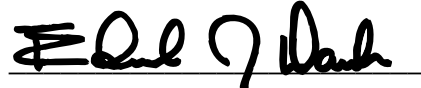
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1 **CONCLUSION**

2 For the reasons state above, this action is DISMISSED for failure to state a claim
3 upon which relief may be granted. See 28 U.S.C. § 1915A(b).

4 **IT IS SO ORDERED.**

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6 **Dated:** 1/17/2017



7 EDWARD J. DAVILA
8 United States District Judge
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