


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
(MAR 28 2006)
at 1 o'clock and 50 min. PM
SUE BEITIA, CLERK 

In re: ROBIN M.S. LEE,)
) ORDER DENYING PETITION TO LIFT
) PRE-FILING REVIEW ORDER
)
Petitioner,) Misc. No. 06-00042 HG-KSC
)
_____)

ORDER DENYING PETITION TO LIFT PRE-FILING REVIEW ORDER

On March 20, 2001, Petitioner Robin M.S. Lee was ordered to show cause why a pre-filing review order should not be entered against any further pleadings received from him ("March 20, 2001 Pre-Filing Review Order"). The March 20, 2001 Pre-Filing Review Order found that Lee had burdened the court with numerous incomprehensible, frivolous, and vexatious pleadings, and that, absent good cause, such an order was required. On March 27, 2001, after Lee failed to show good cause, the court duly entered the pre-filing review order. *See* Order Imposing Pre-Filing Review Requirement as Set Out in This Court's Order of March 20, 2001 ("March 27, 2001 Order"). The pre-filing review order was to remain in effect until further order of the court, although Lee was granted permission to petition the court to lift the order two years from its date of entry.

Lee now petitions the court to lift the pre-filing review order. Lee apologizes for burdening the court with his prior "meritless litigation" and states

EXHIBIT 3

that he was “suffering from auditory hallucinations & other illnesses that affected his thought process.” (Petition 1.) Lee has lodged two new civil actions against the State of Hawaii, or its “Branches of Govt.,” and asks that the pre-filing review order be lifted so that they may be filed. (*Id.*) Lee also requests that these actions “be permitted to be filed with a waiver of filing fees[.]” (*Id.* 2.)

Lee submits a letter from another inmate, David N. Martin, requesting a waiver of filing fees in his and Lee’s “joint/ class action,” which is one of Lee’s lodged civil actions, claiming that he is a “secondary plaintiff of Robin Lee,” and that he, too, is indigent. Lee has enclosed his and Martin’s “Inmate Account Balances & Activity” forms for January 2006, and a letter to the Clerk of Court referencing a “class action v. the office of the public defenders.”

First, the court has reviewed the petition and the two lodged complaints and finds that they are unpersuasive that the pre-filing review order should be lifted or that either lodged complaint deserves encouragement to proceed. The first complaint contains Lee’s claims against the Hawaii Director of Health, the Hawaii State Hospital, the Hawaii Alcohol Foundation, the Sand Island Treatment Center, and others, that he was prevented from filing civil actions

upon (1)E*Trade Securities in which the checks were written on (2) Telecheck Corp that authorized payments of Lee’s checks & guaranteed them with an approval

code; whom Lee was going to demand would file a countersuit upon the Sheraton Waikiki Hotel & their security, who had Lee arrested on 3-25-01 (3) the Honolulu Police Dept. & the City & the County of Honolulu . . . for everyday He spent in prison from 3-25-01 to 6-25-04.

(See Lodged Compl, *Lee v. The Director of Health, et al.*, at 2-3.)

The second lodged complaint, is a “joint” action filed by Lee and Martin, self-titled as a “class action.” In this “complaint,” Lee and Martin seek to sue for monetary damages their different public defenders, at their separate state criminal proceedings, for ineffective assistance of counsel and wrongful imprisonment. They also seek release from prison.

These documents serve only to convince the court that, in fact, Lee has not learned from his past mistakes and is still burdening the court with unclear, meritless, frivolous litigation. For many reasons, neither of these lodged actions state a viable claim under either 42 U.S.C. § 1983 or under 28 U.S.C. § 2254, and in fact, simply restate claims that Lee has made before, which resulted in the entry of the pre-filing review order. This is not to say, however, that Martin is precluded from filing an action in this court, presumably in habeas, raising his claims, but he may not do so in conjunction with Lee.¹

¹Moreover, to the extent that Lee and Martin, non-lawyer *pro se* inmates, intended to bring a class action, they have failed to take even the initial step of

Second, the court takes judicial notice of a recent action that Lee pursued in the Hawaii state courts which was removed to the federal court in December 2005. *See Lee v. Bank of America, N.A.*, Civ. No. 05-00506 SPK. The complaint in this action, which was filed on July 7, 2005, is substantially similar to the actions that resulted in Lee's prefiling review order. Lee's claims in this action are vague, conclusory, and delusional, seeking billions of dollars in damages against the Bank of America for alleged illegal deductions from Lee's account. This action was dismissed for Lee's failure to provide a short, plain statement of his claims against defendants pursuant to Fed. R. Civ. P. 8, with leave granted to amend. Judgment was entered January 24, 2006, when Lee failed to file an amended complaint. (*Id.*, Docket No. 9.) Lee's filing this action in the state court approximately seven months prior to filing this petition persuades the court that he is not "cured," and will continue to burden the court with frivolous filings if the

filing a motion for the court to certify this matter as a class action, pursuant to Fed.R.Civ.P. 23. It is well established that a layperson cannot ordinarily represent the interests of a class. *See McShane v. United States*, 366 F.2d 286 (9th Cir.1966). This rule becomes almost absolute when, as here, the putative class representative is incarcerated and proceeding *pro se*. *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975). Nor can Lee, who is the subject of this prefiling review order, "fairly and adequately protect the interests of the class," as required by Rule 23(a)(4) of the Federal Rules of Civil Procedure. *See Martin v. Middendorf*, 420 F. Supp. 779 (D.D.C. 1976). Nor does their complaint comply with the other requirements of Fed.R.Civ.P 23.

pre-filing review order is lifted.

Third, the court takes judicial notice of a July 28, 2005, state court order, which was filed as an exhibit to *Lee v. Bank of America, N.A.*, designating Lee as a vexatious litigant in the Hawaii state courts, and entering a prefiling review order against him there.² (*See id.*, Def's Scheduling Conference Statement, Ex. A.) A copy of this order and its exhibits are attached to the instant order. (*See Civ. No. 05-1-1224 (SSM) Order Designating Robin M.S. Lee as Vexatious Litigant and Prefiling Order Pursuant to H.R.S. Section 634J-7; Exhibit "A"; Notice of Entry.*) It is clear that Lee was not only filing baseless complaints in state court while he was doing so in this court, but that he continued to file such actions in the state court after he was prohibited from doing so here. It appears that Lee is seeking a lift of the pre-filing review order in this court because he is now also prohibited from filing civil actions in the state court.

²*See U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.1992) (holding that federal courts may "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to the matters at issue.") The court is not here taking as fact the veracity of the findings of fact in this order, but is merely judicially noticing the authenticity and existence of the state court order and the public record therein of the many, many filings Lee has also instituted in the state courts. *See, e.g., Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (a court may take judicial notice of another court's opinion, but not of the truth of the facts recited therein)

Finally, Lee is informed that, if and when this pre-filing review order is lifted, he will not be granted *in forma pauperis* status in this court absent a colorable allegation of imminent danger of serious physical injury. A prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

As the March 20, 2001 Pre-Filing Order documents, Lee has filed at least three prior actions in this court which have been dismissed as frivolous or for failure to state a claim. *See Lee v. Lee, et al.*, Civ. No. 98-00380 ACK; *Lee v. Estate of Lee and United States District Ct.*, Civ. No. 99-00370 SOM; *Lee v. Hawaii Supreme Court, et al.*, Civ. No. 00-00520 HG. Unless Lee alleges a colorable claim of imminent danger of serious physical injury, which the court notes he does not in either of his lodged actions, he may not bring a civil action in the federal courts without prepayment of fees.

CONCLUSION

1. The petition to lift the pre-filing review order is DENIED.

2. The March 20, 2001 Pre-Filing Review Order shall continue in effect until further order of the Court. Lee may petition the Court to lift the pre-filing review order no earlier than two years from the date of this Order, setting forth good cause why the order should be lifted.

3. The pre-filing review order continues to apply to all pleadings filed by Lee if he is proceeding *pro se*. The order shall not apply when Lee is represented by counsel.

4. Any further pleadings submitted by Lee shall be lodged by the Clerk, shall comply with the requirements of the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the District of Hawaii, and shall contain the following sentence in capital letters: "THIS PLEADING IS FILED SUBJECT TO PRE-FILING REVIEW ORDER" in the title of the pleading. The Court shall then determine whether the pleadings should be filed and dismissed pursuant to the pre-filing review order, or whether the pleading is sufficient on its face to proceed.

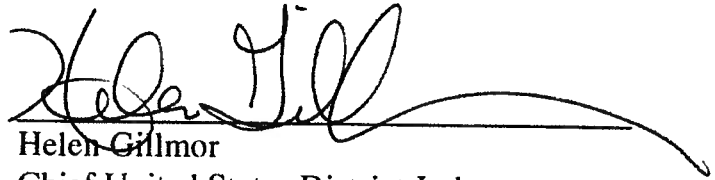
5. The Clerk shall file a copy of the March 20, 2001 Pre-Filing Review Order; a copy of the March 27, 2001 Order Imposing Pre-Filing Review Requirement As Set Out in This Court's Order of March 20, 2001; and a copy of the Circuit Court of First Circuit, State of Hawaii, Civ. No. 05-1-1224 (SSM)

Order Designating Robin M.S. Lee as Vexatious Litigant and Prefiling Order

Pursuant to H.R.S. Section 634J-7; Exhibit "A"; Notice of Entry, in this action.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 26, 2006.


Helen Gillmor
Chief United States District Judge

In re: Robin M.S. LEE, Misc. No. 06-00042 HG-KSC; ORDER DENYING PETITION TO LIFT PRE-FILING REVIEW ORDER; dmp/orders 06/RMSLEE dny lift pre-filing rvw ord.