UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

EDWARD H. FLINT **PLAINTIFF**

v. **CIVIL ACTION NO. 3:11CV-258-S**

JOHN G. HEYBURN II **DEFENDANT**

MEMORANDUM OPINION

Plaintiff, Edward H. Flint, filed this civil action on May 2, 2011. He sues United States District Court Judge John G. Heyburn II, in his individual capacity. Upon review, the Court concludes that Plaintiff's claim is devoid of merit. Accordingly, the Court will dismiss it pursuant to its authority under *Apple v. Glenn*, 183 F.3d 477 (6th Cir. 1999).

Plaintiff's complaint contains numerous allegations against Defendant. Essentially, however, he alleges that Defendant is biased against him because he sued several Jefferson County Circuit Court judges in 2009. Plaintiff states that due to this bias, Defendant has manipulated the system so that he would be placed on certain cases involving Plaintiff, denied Plaintiff's due process rights, lied in court orders, taken advantage of Plaintiff's judicial inexperience, and otherwise abused his position as a judge of this Court to Plaintiff's detriment. Plaintiff seeks money damages and removal of Defendant from the federal bench.

Generally, a district court may not *sua sponte* dismiss a complaint where the filing fee has been paid unless the court gives the plaintiff the opportunity to amend the complaint. *See Apple v. Glenn*, 183 F.3d at 479. However, where a complaint is "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion," the district court need not afford the plaintiff an opportunity to amend the complaint. *Id.* (citing *Hagans v. Lavine*, 415 U.S. 528, 536 (1974)).

Judges are entitled to absolute immunity for actions arising out of all acts performed in the exercise of their judicial functions. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). "Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). "Immunity applies even when the judge is accused of acting maliciously and corruptly." *Harlow v. Fitzgerald*, 457 U.S. 800, 815-19 (1982). The United States Supreme Court has made clear that immunity is overcome in only two sets of circumstances: "[f]irst, a judge is not immune from liability for non-judicial actions . . .; [s]econd, a judge is not immune for actions, though judicial in nature, are taken in complete absence of all jurisdiction." *Mireles*, 502 U.S. at 12. Additionally, the only way to remove a federal judge from office is through the formal impeachment process. *Thornton-Bey v. Admin. Office of the U.S. Crts.*, No. 10 1546, 2010 U.S. Dist. LEXIS 96011 at *2 (D.D.C. Aug. 31, 2010) (citing U.S. Const. art. I, § 3, cl. 6). A judge may not be removed from office as part of a civil action.

All Plaintiff's allegations against Defendant in this case relate to actions he took as a judicial officer of the court. Furthermore, Plaintiff has not shown that Defendant acted in the absence of jurisdiction on his cases. Thus, Plaintiff's allegations that Defendant's actions were legally incorrect and done with malicious intent do not state a claim for relief because Defendant is absolutely immune from suit.

Upon review, the Court concludes that *sua sponte* dismissal under *Apple v. Glenn* is appropriate because it is "no longer open to discussion" that Plaintiff's claims are devoid of all legal merit. *See Metzenbaum v. Nugent*, 55 F. App'x 729 (6th Cir. 2003) (upholding district

court's *sua sponte* dismissal of a complaint under *Apple v. Glenn* because the named defendant, a judge, was entitled to absolute judicial immunity); *Forbush v. Zaleski,* 20 F. App'x 481 (6th Cir. 2001) (same).

Accordingly, the Court will enter a separate Order of Dismissal.

Date:
May 3, 2011

Charles R. Simpson III, Judge
United States District Court

cc: Plaintiff, *pro se*
Defendant
4413.008