

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS, MT.

FOR THE DISTRICT OF MONTANA

2011 APR 13 PM 12 32

BILLINGS DIVISION

PATRICK B. ...
BY _____
DEPUTY CLERK

KENNETH EDWARD BARBOUR,

Cause No. CV-11-36-BLG-RFC-CSO

Plaintiff,

vs.

RECOMMENDATION AND ORDER

**42nd PRESIDENT OF THE
UNITED STATES-WILLIAM
JEFFERSON CLINTON, in his
official and individual capacity,**

Defendant.

Plaintiff Kenneth Barbour is incarcerated at the Red Onion State Prison in Pound, Virginia. He has submitted a Motion to Proceed in Forma Pauperis (*Court Doc. 1*) and a proposed prisoner civil rights complaint (*Court Doc. 2*). The named Defendant is former President William Jefferson Clinton. Barbour is proceeding without counsel.

Barbour is not a Montana inmate (see www.app.mt.gov/cgi-bin/conweb) and does not appear to have any connections to Montana. Since November 2008, Barbour has filed close to 200 actions in the United States federal courts.

The three-strikes provision of 28 U.S.C. § 1915(g) provides as

follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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.

Barbour has had at least three non-habeas civil complaints or appeals previously dismissed as frivolous or for failing to state a claim upon which relief may be granted. See Barbour v. Virginia Department of Corrections, et al., 7:09cv00091 (W.D.Va April 8, 2009); Barbour v. Stanford, et al., 7:09cv77 (W.D. Va. April 7, 2009); Barbour v. Virginia Department of Corrections, 7:09cv83 (W.D. Va. April 6, 2009), Barbour v. Chief Federal District Judge District of Hawaii Som, 1:11cv00210-LEK-RLP (April 6, 2011). Therefore, Barbour falls squarely within the three-strikes provision of 28 U.S.C. § 1915(g) and he may not proceed in forma pauperis unless he is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Barbour seeks to impose liability upon former President Clinton for signing the Prison Litigation Reform Act ("PLRA") in 1996. He asks

that the PLRA be repealed. Barbour makes no allegation of being in imminent danger of serious physical harm.

While the Court ordinarily gives litigants a period of time to pay the full filing fee of \$350.00, it will not do so in this case. Barbour has been previously advised of having three strikes. Moreover, his claims in this matter are frivolous as Mr. Clinton is entitled to absolute immunity from damages as to conduct within the scope of his official duties, which includes signing legislation. Nixon v. Fitzgerald, 457 U.S. 731, 749, 102 S.Ct. 2690, 2701, 73 L.Ed.2d 349 (1982).

Barbour has a history of abusing the system and filing frivolous lawsuits. Long before he filed this action, Barbour knew, from his previous filings, that he would not be permitted to proceed in forma pauperis.

Because Barbour is not entitled to a ten-day period to object, this Order will be entered directly upon endorsement. See Minetti v. Port of Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam).

No motion for reconsideration will be entertained.

Based on the foregoing, the Court **RECOMMENDS** that the

following Order be issued by Judge Cebull.

DATED this 12th day of April, 2011.

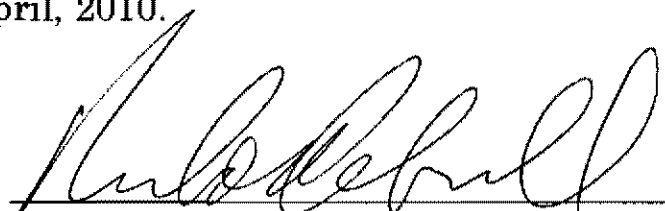

CAROLYN S. OSTBY
United States Magistrate Judge

Based upon the above Recommendation by Judge Ostby, the Court issues the following:

ORDER

1. Barbour's Motion to Proceed in Forma Pauperis (*Court Doc. 1*) is **DENIED** pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. No motions for reconsideration or rehearing will be entertained and the Clerk of Court is directed to discard any such motions.

DATED this 13th day of April, 2010.


RICHARD F. CEBULL
United States District Judge