

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT B. CIARPAGLINI,

Plaintiff,

v.

KEVIN KALLAS, PAUL SUMNIGHT,
MARY GORSKE and BELINDA SCHRUBBE,

Defendants.

ORDER

07-cv-618-bbc

In a December 31, 2007 order issued in this case, I sanctioned plaintiff Robert Ciarpaglini for filing dozens of frivolous lawsuits in this court (about 90 since 1995, at least 18 of which were filed in 2007 alone), stating as follows:

Further, IT IS ORDERED that the clerk of court route directly to chambers without filing any future actions petitioner submits to this court that are not accompanied by the full filing fee so that I may examine them. If I find that petitioner is alleging that he is being denied medical care or that some other condition of his confinement is causing him to suffer the symptoms of his various physical ailments, the complaint will be placed in a miscellaneous file and no action will be taken with respect to it. If petitioner files a complaint alleging imminent danger of serious physical injury concerning a matter other than his medical conditions, I will direct that the complaint be filed. These complaints will be reviewed formally to determine whether plaintiff's allegations of imminent danger are credible and, if they are, whether the complaint states a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2). However, petitioner is cautioned that even if his complaint survives screening, I will not hesitate to curtail his legal activities further if he does not ultimately prove that he is in imminent danger of serious physical injury.

Dkt. #4.

Over the past four and one-half years that the sanction has been in place, plaintiff has not flooded this court with complaints to be reviewed, PACER does not show any further federal filings and an examination of the state's circuit court Consolidated Court Automation Programs website shows a relative dearth of filings other than several John Doe criminal proceedings initiated by plaintiff in 2011.

On March 6, 2012, plaintiff submitted a proposed complaint alleging that he has a sensitivity to light, is housed in a segregation unit with 24-hour illumination and is consequently suffering from migraine headaches, blurred vision and other symptoms. This complaint was returned to plaintiff under the December 31, 2007 sanctions order. On March 26, 2012, plaintiff submitted a new complaint setting forth similar claims, as well as a motion seeking relief from the December 31, 2007 sanctions order. In his motion, plaintiff stated that his allegations do not fit within the scope of the sanctions order. Moreover, he stated that he regretted abusing the court system in the past and had regained control over the mental illness that had caused him to act irrationally in filing so many cases.

In a June 7, 2012 order, I concluded that it was perhaps appropriate to reconsider the sanction order. However, in light of plaintiff's history of wasting judicial resources by filing claims without exhausting his administrative resources as required under the Prisoner Litigation Reform Act, I concluded that it would be inappropriate to lift the sanction unless plaintiff could show that he had exhausted his administrative remedies with regard to his new claims.

On June 13, plaintiff responded to the court's June 7 order, stating that he has been released from prison, would soon be sending proof of exhaustion of his claims and was considering whether to continue with his current claims or whether he would turn to "more pressing one[s]." Dkt. #8. Plaintiff never followed up with proof of exhaustion (and thus I assume he has abandoned these claims), but instead has filed two more motions for relief from the court's sanction as well as two proposed amended complaints concerning his treatment in prison: one concerning a delay in treatment for a broken finger, and a second bringing claims that prison staff retaliated against him for making complaints against staff. Plaintiff seeks also to proceed in forma pauperis with both cases.

This raises the question how to resolve plaintiff's requests to remove the sanction against him. On one hand, in the years leading up to his release, plaintiff refrained from filing any frivolous litigation on this court. On the other, in the two months since his release, he has already seemingly filed and abandoned one complaint (his March 26 filing) and then filed two more complaints in this court as well as two in other district courts in the Seventh Circuit. Nos. 12-cv-831 (E.D. Wis.) and 12-cv-50289 (N.D. Ill.) Complicating matters is the fact that the current sanction (a complete bar with only certain exceptions such as a complaint truly alleging that he is in imminent danger of serious physical harm in prison) is tailored for a prisoner, and it is difficult to envision a scenario under which plaintiff could file any action in this court under this sanction now that he has been released.

I am wary that removing the filing bar would lead to plaintiff once again opening the floodgates of litigation in this court. However, I conclude that the sanction can be modified

to allow plaintiff to submit civil pleadings so long as he pays the filing fee for each new action. In light of his past misconduct, plaintiff will not be eligible for in forma pauperis status in any civil proceeding in this court. (He may apply for that status in any criminal proceeding brought against him.) E.g., Sassower v. American Bar Ass'n, 33 F.3d 733, 736 (7th Cir. 1994). I conclude that this modified sanction should have adequate teeth to avoid future massive waste of judicial resources. This sanction may be modified in the future should plaintiff show that he is capable of limiting his litigation to bona fide claims. It may also be made more restrictive should plaintiff prove unable of curtailing his frivolous filings.

Plaintiff will be given a short time to respond to this order, explaining whether he wishes to proceed with either of those two new proposed complaints by submitting a \$350 payment of the filing fee for either of those actions. Should plaintiff provide a filing fee for a particular complaint, the clerk of court is directed to open a new case containing that pleading.

ORDER

IT IS ORDERED that

1. Plaintiff Robert Ciarpaglini's motions for relief from the court's December 31, 2007 sanctions order in this case, dkt. ##6, 10, 11 are GRANTED IN PART; the court's sanctions against plaintiff are modified as detailed in this order. Going forward, the clerk of court is directed to return unfiled any pleadings filed by plaintiff that are not accompanied by the necessary filing fee.

2. Plaintiff may have until September 6, 2012, to inform the court whether he wishes to pursue either of the two proposed complaints he has recently filed in ths court. In order to do so he will have to submit a \$350 payment for each case he wishes to pursue.

Entered this 21st day of August, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge