

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Clifford C. Loyer et al. v. Los Angeles Sheriff's Department et al.

Loyer · No. 2:23-cv-1580-FWS-RAO · Decided March 6, 2023

SUMMARY

The United States District Court for the Central District of California issued an order to show cause in a pro se prisoner civil-rights class action. The court directed the plaintiffs to pay the filing fee or submit in forma pauperis materials and ordered Clifford C. Loyer to explain why the complaint should not be dismissed without prejudice because a pro se litigant may not represent a class.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Fred W. Slaughter
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 6, 2023
DOCKET	2:23-cv-1580-FWS-RAO
DISPOSITION	other
PROCEDURAL POSTURE	The district court issued an order to show cause after plaintiffs filed a civil-rights complaint without paying the filing fee or submitting the required in forma pauperis materials, and after the complaint indicated that a pro se prisoner sought to represent a class.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Clifford C. Loyer, Ricardo Torres, Daniel Penaloza, Oscar Madrigal, Grorige Roy Stephenson, Chavncey Mamilton, Thomas Mathis, Juan Tapia, Franklin Fouthier, Robert Arballo, Omar Winston, James Buster, Edgar Avila, Jerriel Sanders, Marshal Silva, Adrian Rios, Hakoup Sardareyan v. Los Angeles Sheriff's Department

TOPICS

- class actions
- civil procedure
- pleadings
- civil rights
- prisoners rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs' failure to pay the civil filing fee or submit the required in forma pauperis materials could subject the action to dismissal under Federal Rule of Civil Procedure 41(b).
2. Whether a pro se prisoner may represent a putative class under Federal Rule of Civil Procedure 23.

HOLDINGS

1. A federal district court may dismiss an action for failure to prosecute under Federal Rule of Civil Procedure 41(b), including sua sponte in appropriate circumstances; plaintiffs were required to pay the filing fee or submit the appropriate in forma pauperis materials within thirty days or risk dismissal.
2. A pro se litigant may not serve as the representative of a class because the right to proceed pro se is personal to the litigant and does not extend to representing other parties or entities.

KEY QUOTATIONS

"Plaintiffs must pay the filing fee or submit the appropriate forms within thirty (30) days or their case may be dismissed." (1)

"Accordingly, because Plaintiff Loyer may not represent the class pro se, the court ORDERS Plaintiff Loyer to SHOW CAUSE in writing by March 24, 2023, why the Complaint should not be dismissed without prejudice to Plaintiff Loyer, or any other plaintiff, filing a new action solely on their own behalf." (2)

FACTUAL BACKGROUND

Plaintiffs filed a civil-rights complaint but had not paid the civil filing fee or filed the forms and declaration required to proceed in forma pauperis. The complaint alleged that plaintiff Clifford C. Loyer, proceeding as a prisoner and pro se, sought to represent a class. The court concluded that a pro se litigant could not serve as a class representative and directed Loyer to show cause why the complaint should not be dismissed without prejudice.

PROCEDURAL HISTORY

Plaintiffs commenced a civil-rights action in the Central District of California. The Clerk directed plaintiffs to pay the filing fee or submit the required in forma pauperis forms within thirty days. The court then ordered Clifford C. Loyer to show cause in writing why the complaint should not be dismissed without prejudice because he could not represent the putative class pro se.

DISPOSITION

other

CASES CITED

- Link v. Wabash R.R., 370 U.S. 626, 629 (1962)

- Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 693, 689 (9th Cir. 2005)
- Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984)
- Khalid v. Microsoft Corp., 409 F. Supp. 3d 1023, 1031 (W.D. Wash. 2019)
- Reed v. Bd. of Prison Terms, 2003 WL 21982471, at *1 (N.D. Cal. Aug. 8, 2003)
- Welch v. Terhune, 11 Fed. App'x 747, 747 (9th Cir. 2001)
- Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008)
- McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966)
- C.E. Pope Equity Tr. v. United States, 818 F.2d 696, 697 (9th Cir. 1987)

OPINION

Clifford C. Loyer v. Los Angeles Sheriffs Dept.

PER CURIAM.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:23-cv-1580-FWS-RAO Date: March 6, 2023 Title: Clifford C. Loyer et al. v. Los Angeles Sheriff's Department et al.

Present: HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE

Melissa H. Kunig N/A Deputy Clerk Court Reporter Attorneys Present for Plaintiffs: Attorneys Present for Defendants: Not Present Not Present

PROCEEDINGS: ORDER TO SHOW CAUSE

Before the court is Plaintiffs Clifford C. Loyer, Ricardo Torres, Daniel Penaloza, Oscar Madrigal, Grorige Roy Stephenson, Chavncey Mamilton, Thomas Mathis, Juan Tapia, Franklin Fouthier, Robert Arballo, Omar Winston, James Buster, Edgar Avila, Jerriel Sanders, Marshal Silva, Adrian Rios, and Hakoup Sardareyan's (collectively, "Plaintiffs") "Civil Rights Complaint." (Dkt. 1 ("Complaint or Compl.")). As a preliminary matter, the court notes that Plaintiffs have not: (1) paid the civil filing fee; or (2) filed the CV-60P form and declaration required to proceed in forma pauperis. (See generally Dkt.) As stated by the Clerk of Court, (Dkt. 2), Plaintiffs must pay the filing fee or submit the appropriate forms within thirty (30) days or their case may be dismissed. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629 (1962) ("The authority of a federal trial court to dismiss a plaintiffs action with prejudice because of his failure to prosecute cannot seriously be doubted."); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 693, 689 (9th Cir. 2005) ("[C]ourts may dismiss under Rule 41(b) sua sponte, at least under certain circumstances."); Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984) ("It is within the inherent power of the court to sua sponte dismiss a case for lack of prosecution."). In addition, the court observes the Complaint alleges Plaintiff Clifford C. Loyer represents this prisoner class action pro

se. (See Compl. at 3.) However, under Federal Rule of Civil Procedure 23, “[a] pro se litigant may not serve as the representative of a class.” Khalid v.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No.: 2:23-cv-1580-FWS-RAO Date: March 6, 2023 Title: Clifford C. Loyer et al. v. Los Angeles Sheriff’s Department et al. Microsoft Corp., 409 F. Supp. 3d 1023, 1031 (W.D. Wash. 2019); Reed v. Bd. of Prison Terms, 2003 WL 21982471, at *1 (N.D. Cal. Aug. 8, 2003) (“Pro se prisoner plaintiffs may not bring class actions because they are not adequate class representatives able to fairly represent and adequately protect the interests of the class.”); Welch v. Terhune, 11 Fed. App’x 747, 747 (9th Cir. 2001) (“The district court properly determined that [plaintiff], proceeding pro se, could not prosecute the instant action as a class action.”); Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) (“It is well established that the privilege to represent oneself pro se provided by § 1654 is personal to the litigant and does not extend to other parties or entities.”) (citing McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966)); C.E. Pope Equity Tr. v. United States, 818 F.2d 696, 697 (9th Cir. 1987) (stating a non-attorney “has no authority to appear as an attorney for others than himself”). Accordingly, because Plaintiff Loyer may not represent the class pro se, the court ORDERS Plaintiff Loyer to SHOW CAUSE in writing by March 24, 2023, why the Complaint should not be dismissed without prejudice to Plaintiff Loyer, or any other plaintiff, filing a new action solely on their own behalf. IT IS SO ORDERED. Initials of Deputy Clerk: mku

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