

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Jolee Kimble v. Frank Birchank

Kimble v. Birchank, No. 25-cv-3507-AGS-SBC (S.D. Cal. Dec. 15, 2025) · No. 25-cv-3507-AGS-SBC · Decided December 15, 2025

SUMMARY

The United States District Court for the Southern District of California grants Jolee Kimble’s motion to proceed in forma pauperis. The court screens and dismisses the complaint against Superior Court Judge Frank Birchank based on judicial immunity, while granting leave to amend by January 16, 2026.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Andrew G. Schopler
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 15, 2025
DOCKET	25-cv-3507-AGS-SBC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a civil action against a state superior court judge, moved to proceed in forma pauperis, and received mandatory screening under 28 U.S.C. § 1915(e)(2).
STANDARD OF REVIEW	Mandatory screening under 28 U.S.C. § 1915(e)(2); dismissal is required if the complaint fails to state a claim or seeks monetary relief from an immune defendant.
PRECEDENTIAL VALUE	unknown

TOPICS

- civil procedure
- civil rights
- government liability
- motions to dismiss

PRACTICE AREAS

- civil procedure
- civil rights
- judicial immunity

QUESTIONS PRESENTED

1. Whether plaintiff should be permitted to proceed in forma pauperis.
2. Whether the complaint should be dismissed at mandatory screening because it sought monetary relief from a judicial defendant protected by judicial immunity.
3. Whether plaintiff should receive leave to amend the complaint.

HOLDINGS

1. The court granted plaintiff's motion to proceed in forma pauperis because her financial allegations showed that she could not prepay the filing fees, and a plaintiff need not be completely destitute to qualify.
2. The complaint was subject to dismissal under 28 U.S.C. § 1915(e)(2) because Judge Birchank appeared entitled to absolute judicial immunity for the alleged judicial acts.
3. The court granted plaintiff leave to file a new amended complaint addressing the deficiencies, subject to a deadline of January 16, 2026.

KEY QUOTATIONS

“Accordingly, judges may not be sued in civil actions for their judicial acts, “however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.”” (at 1)

“There are only two instances in which a judge will be deprived of this immunity.” (at 1)

FACTUAL BACKGROUND

Jolee Kimble sued Superior Court Judge Frank Birchank based on allegations that he put two filings in the U.S. Mail after Kimble appeared before him on December 10, 2025. The court viewed the alleged conduct as having occurred while Birchank was functioning in his judicial role and found no indication that he acted without jurisdiction. Kimble asserted that she was homeless, had only recently obtained employment, possessed virtually no assets, and incurred approximately \$1,900 per month in expenses.

PROCEDURAL HISTORY

Plaintiff sought to proceed without prepaying the filing fee. The court granted in forma pauperis status but screened and dismissed the complaint because the named judicial defendant appeared immune from suit. The dismissal was with leave to amend by January 16, 2026.

DISPOSITION

dismissed

CASES CITED

- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999)
- Blount v. Saul, No. 21-cv-0679-BLM, 2021 WL 1561453, at *1 (S.D. Cal. Apr. 21, 2021)
- Bradley v. Fisher, 80 U.S. 335, 347 (1871)

- *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)
- *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)

OPINION

1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF CALIFORNIA 3 Jolee KIMBLE, Case No.: 25-cv-3507-AGS-SBC 4 Plaintiff, ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS 5 v. (ECF 2) AND DISMISSING 6 Frank BIRCHANK, COMPLAINT 7 Defendant. 8 9 Plaintiff Jolee Kimble, proceeding without an attorney, seeks to waive the filing fee 10 for her lawsuit against Superior Court Judge Frank Birchank.

(ECF 1, at 2.) Her request to 11 proceed without prepayment is granted, but her case does not survive mandatory screening 12 and is dismissed with leave to amend. 13 DISCUSSION 14 A. Motion to Proceed In Forma Pauperis 15 Parties instituting a civil action in a federal district court must typically pay filing 16 fees of \$405. 28 U.S.C. § 1914(a) (\$350 filing fee); District Court Misc.

Fee Schedule, 17 § 14 (effective Dec. 1, 2023) (\$55 administrative fee). But if granted the right to proceed 18 in forma pauperis (“IFP”), a plaintiff can proceed without prepaying those fees. *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff claims to be “homeless,” and 20 although she is very recently employed at “Applebees,” she has virtually no assets to her 21 name and “\$1,900” a month in expenses.

(See ECF 2, at 2, 4, 5.) Her request is granted, 22 after all a plaintiff “need not be completely destitute to proceed IFP.” *Blount v. Saul*, No. 23 21-cv-0679-BLM, 2021 WL 1561453, at *1 (S.D. Cal. Apr. 21, 2021). 24 B. Screening 25 In addition, when reviewing an IFP motion, the court must screen the complaint and 26 dismiss it if—among other things—it “fails to state a claim” or “seeks monetary relief 27 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2) (B).

This 28 1 requirement is an obstacle here, as the only named defendant—a Superior Court judge—2 appears to be immune from suit. 3 “[A] judicial officer, in exercising the authority vested in him, shall be free to act 4 upon his own convictions, without apprehension of personal consequences to himself.” 5 *Bradley v. Fisher*, 80 U.S. 335, 347 (1871).

Accordingly, judges may not be sued in civil 6 actions for their judicial acts, “however erroneous the act may have been, and however 7 injurious in its consequences it may have proved to the plaintiff.” *Id.* Litigants who believe 8 judicial proceedings have wrongfully harmed them may pursue relief through the appellate 9 process; they are not entitled to sue judges for alleged mistakes in their decision making.

10 Judicial immunity seems to apply to all plaintiff’s claims against Judge Birchank, which 11 center on Judge Birchank allegedly “putting 2 filings in the U.S. Mail” after plaintiff 12 appeared

before him “on December 10, 2025.” (ECF 1, at 2.) 13 There are only two instances in which a judge will be deprived of this immunity. 14 “First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken 15 in the judge’s judicial capacity.

Second, a judge is not immune for actions, though judicial 16 in nature, taken in the complete absence of all jurisdiction.” *Mireles v. Waco*, 502 U.S. 9, 17 11–12 (1991) (internal citations omitted). Nothing in the complaint suggests either 18 exception applies: the actions were taken by Judge Birchank while allegedly functioning 19 in his judicial role, and there is no reason to suspect he lacked jurisdiction over plaintiff’s 20 underlying case.

21 So, the complaint must be dismissed. But the Court will give plaintiff an opportunity 22 to amend. See *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (holding amendment 23 is typically appropriate “unless it is absolutely clear that the deficiencies of the complaint 24 could not be cured by amendment”). 25 CONCLUSION 26 Thus, the Court orders as follows: 27 1.

Plaintiff’s motion to proceed in forma pauperis is GRANTED. 28 2. By January 16, 2026, plaintiff may file a new amended complaint addressing 1 || the deficiencies discussed in this order. The amended complaint must be complete by itself 2 || without reference to any previous version of his pleading; defendants not named and any 3 || claims not re-alleged in the amended complaint will be considered waived.

If plaintiff fails 4 ||to timely amend, the Court will enter a final Order dismissing this case. 5 Dated: December 15, 2025 7 Hon. rew G. Schopler United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28