

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)

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