

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DAVID B. WATSON, SR., et al.,)	
)	
Plaintiffs)	
)	
v.)	Docket No. 05-21-B-W
)	
JUDGE JEFFREY HJELM,)	
)	
Defendant)	

**ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS
AND RECOMMENDED DISMISSAL OF THE CASE IN ITS ENTIRETY**

On February 2, 2005 *pro se* plaintiffs David B. Watson, Sr., and Linda M. Watson sought leave to proceed *in forma pauperis* in this action asserting claims against Maine Superior Court Justice Jeffrey Hjelm. See Application To Proceed Without Prepayment of Fees and Affidavit (“Application”) (Docket No. 2). I grant the plaintiffs’ leave request, but also recommend that the court dismiss the action with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

The plaintiffs’ complaint seeks \$10 million in damages from Justice Hjelm as a result of a series of allegedly prejudiced and biased decisions he rendered against David Watson and, in two cases, Linda Watson as well. *See generally* Amendment to Law Suit Against Judge Hjelm (“Second Amended Complaint”) (Docket No. 5).¹

As the plaintiffs themselves recognize, *see* Second Amended Complaint at 5, their complaint

¹ The Docket reflects that the Watsons filed their original complaint against Justice Hjelm on February 2, 2005 and

implicates the concept of judicial immunity. As the Supreme Court has explained:

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.

Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (citations omitted).

Nothing in the complaint – even read liberally, as it must be when filed by a *pro se* plaintiff, *see, e.g., Donovan v. Maine*, 276 F.3d 87, 94 (1st Cir. 2002) – indicates that any nonjudicial activity is in issue. To the contrary, the complaint targets a series of rulings by Justice Hjelm in cases involving (i) a harassment claim against David Watson by his brother, (ii) a post-conviction review (“PCR”) proceeding initiated by David Watson, (iii) a civil suit by David Watson against one Leroy Knowlton and his insurance company, and (iv) two pending civil suits by David and Linda Watson against Wal-Mart Stores, Inc. and one Vinal G. Teague. *See generally* Second Amended Complaint.

The complaint does allege that, with respect to two of the above-described cases – the PCR proceeding and the Knowlton case – Justice Hjelm acted without jurisdiction. *See id.* However, these allegations of jurisdictional defect plainly are without merit.

As an initial matter, the plaintiffs assert that Justice Hjelm had no jurisdiction to preside over David Watson's PCR proceeding because he was then a District Court judge. *See id.* at 1-2. I take judicial notice that the PCR proceeding to which the plaintiffs refer is *Watson v. State*, Criminal No. 96-440 (Me.

two amended complaints on February 10, 2005. *See* Docket.

Super. Ct.) (“Watson PCR Proceeding”). Watson filed his PCR petition on July 18, 1996. *See* Docket, Watson PCR Proceeding (entry of July 18, 1996) . Shortly thereafter, the matter was assigned to the regular criminal docket. *See* Post-Conviction Assignment Order, Watson PCR Proceeding (July 23, 1996) at 2. Justice Hjelm first presided in the case on January 7, 1997. *See* Docket, Watson PCR Proceeding (entry of Jan. 7, 1997, referring to “Hjelm, J., District Court Judge, Sitting as Superior Court Justice”). The last docket entry in the case was made on December 12, 1997. *See id.* (entry of Dec. 12, 1997).

During the time frame of the Watson PCR Proceeding, as now, jurisdiction over state PCR proceedings was vested in the Superior Court. *See* 15 M.R.S.A. § 2123(1) (2003 & Supp. 2004) & Historical and Statutory Notes thereto. An “Assigned Justice,” for purposes of PCR proceedings, was defined in relevant part as “any Justice or Active Retired Justice attending to the regular criminal calendar when the post-conviction review proceeding is assigned to the regular criminal calendar.” *Id.* § 2121(1-A) (2003) & Historical and Statutory Notes thereto (amended 2003, *see* Supp. 2004). Maine law also then provided, in relevant part:

A Judge or an Active Retired Judge of the District Court or Administrative Court may be assigned by the Chief Justice of the Supreme Judicial Court to sit in the Superior Court in any county, and when so directed he shall have authority and jurisdiction therein as if he were a regular Justice of the Superior Court; and whenever the Chief Justice of the Supreme Judicial Court so directs, he may hear all matters and issue all orders, notices, decrees and judgments that any Justice of the Superior Court is authorized to hear and issue. . . .

4 M.R.S.A. § 157-C (1989 & Supp. 2004) & Historical and Statutory Notes thereto (amended 1999, *see* Supp. 2004).

I take judicial notice that, by order dated January 2, 1997, then-Supreme Judicial Court Chief Justice Daniel E. Wathen assigned then-Judge Hjelm, among others, to sit in the Superior Court. *See*

[Order], Docket No. SJC-404 (Me. Jan. 2, 1997). Judge Hjelm accordingly had jurisdiction to preside at the Watson PCR Proceeding.

With respect to the Knowlton case, the plaintiffs allege that, having granted David Watson's motion for a default judgment, Justice Hjelm lacked jurisdiction to grant a motion by Knowlton to set it aside. *See* Second Amended Complaint at 2-3, 5. This contention is frivolous. A default judgment is not necessarily set in stone, as the plaintiffs seem to believe. *See id.* It may be set aside pursuant to Maine Rules of Civil Procedure 55(c) or 60(b). *See* Me. R. Civ. P. 55(c) & 60(b); *see also, e.g., Butler v. D/Wave Seafood*, 791 A.2d 928, 932 (Me. 2002) (describing circumstances under which relief from default judgment appropriate). Justice Hjelm possessed the jurisdiction to grant such relief.

In sum, inasmuch as (i) a judge such as Justice Hjelm is entitled to immunity from both suit and damages except to the extent the conduct complained of can be categorized as a nonjudicial activity or an activity undertaken without jurisdiction, and (ii) the Complaint neither implicates a nonjudicial activity nor contains a colorable claim that Justice Hjelm acted without jurisdiction, it fails to state a claim as to which relief may be granted. Indeed, it can accurately be described as frivolous. *See, e.g., Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (a complaint is "frivolous" when it "lacks an arguable basis either in law or in fact").

In forma pauperis status is available under 28 U.S.C. § 1915(a)(1). However, section 1915(e)(2)(B) also provides, in relevant part:

[T]he court shall dismiss the case at any time if the court determines that —

* * *

(B) the action or appeal —

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

Accordingly, I **GRANT** the plaintiffs' request for leave to proceed *in forma pauperis* and recommend that this action be **DISMISSED** with prejudice in its entirety on any or all of the above three bases.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 17th day of February, 2005.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge