

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ROLLY O. KINNELL,

Plaintiff,

v.

CASE NO. 02-3228-SAC

U.S.A., et al.,

Defendants.

O R D E R

This civil rights complaint was dismissed nearly six years ago on August 21, 2002 (Doc. 5). Nearly three years later, plaintiff filed a post-judgment motion, which was denied (Doc. 9). Plaintiff then filed two more motions, and the court ordered:

Noting plaintiff's submission of the same or similar frivolous filings in a number of plaintiff's earlier filed but closed cases, the court finds it appropriate to require that plaintiff obtain leave of the court before any further pleading is submitted by plaintiff for filing in this action.

(Doc. 12) at 1. Plaintiff filed another motion in 2006, which the court denied, and then stated:

Plaintiff is advised that the court will deny leave to file any future pleadings containing the same or similar claims to those asserted in the instant motion.

(Doc. 14) at 1-2. The court also ordered:

that plaintiff shall seek leave of the court before he submits any other pleading for filing in this action. Any such request shall reference the present order. The failure to comply with this directive may result in the striking of the pleading without prior notice to plaintiff.

Id. at 2. Plaintiff appealed this order, and the Tenth Circuit

Court of Appeals dismissed his appeal pursuant to 28 U.S.C. § 1915(g) for failure to prepay the appellate filing fee. Appeal No. 06-3119 (Doc. 20). Mr. Kinnell then submitted additional motions, which this court construed as motions for leave to file pleadings only and denied (Doc. 23). Plaintiff apparently appealed this Order, and his appeal was again dismissed for lack of prosecution. Appeal No. 08-3041 (Doc. 25).

Mr. Kinnell was still not deterred and has recently submitted another mailing. The court has reviewed these materials, which are entitled "Motion for Leave to File Rule 60(a)(b)(2)(3)(4)(6) Affidavit of Prejudice Against Sam Crow, Rule 28 U.S.C. 144, 28 U.S.C. 455(a)(2)(3) He has Enforced 28 U.S.C. § 1915(g)" received April 16, 2008. The court finds from these materials and the record that Mr. Kinnell continues to fail or refuse to abide by the filing restrictions ordered in this and some other of his twenty-three closed federal cases. The court further finds that these materials do not comply with the filing restrictions already imposed and recited herein. They are not simply a motion for leave to file a pleading in this case. Instead, they are the pleading he intends to have filed. He has inserted the words "Motion for Leave" before the title of the pleading. Nevertheless, the document does not comply with the court's prior orders that he seek leave of court before submitting any further pleading. Nor does it refer to either of the court's prior orders setting forth filing restrictions. The court further finds that these materials contain no significant new facts, arguments, or authorities that would support a timely, proper post-judgment

motion or motion to recuse<sup>1</sup>. The court shall order the submitted materials returned to Mr. Kinnell unfiled due to his failure to comply with the existing filing restrictions in this case.

In the interest of preserving judicial resources, the court finds it necessary at this time to order more specific filing restrictions upon Mr. Kinnell in this case<sup>2</sup>. After the entry of this Order, the only pro se pleading that will be accepted by the clerk's office from Mr. Kinnell for filing in this case is a single-paged motion with the case caption and title of "Motion for Leave to File Pleading" at the top<sup>3</sup>. In the body of this motion, Mr. Kinnell must state the title of the pleading he wishes to file herein and in a sentence or two very briefly describe the pleading's legal and factual basis. The pleading he seeks to file is not to be included with the motion. If a pleading is submitted for filing before this court has entered an order granting plaintiff's motion for leave to file that particular pleading, the pleading and the motion for leave shall not be filed but shall be returned to plaintiff. In addition, Mr. Kinnell's "Motion for

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Plaintiff continues to complain of the undersigned judge's rulings in his cases, including the application of 28 U.S.C. § 1915(g). He has previously been advised that this is not a proper basis for recusal.

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Similar restrictions have been ordered in Kinnell v. Sec'y Veterans Affairs, No. 98-3112 (D.Kan. July 10, 2008); and Kinnell v. State, 00-3235 (D.Kan. July 8, 2008).

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Mr. Kinnell is also directed to file any motion in one case only. If he wishes to file the same motion in two or more cases, he must submit a separate motion in each case with only that case's number in the caption. The materials being returned have the captions of four closed cases thereon: Case No. 98-3112, Case No. 00-3235, Case No. 07-3241 and this case. It's return shall be noted in this case only.

Leave to File Pleading" must be based upon relevant facts, Supreme Court authority, or arguments that he has not presented in prior pleadings filed herein; and he must so aver in his motion. Any motion that does not contain a credible averment that it is based upon new facts, authority, or arguments will be denied. Lastly, Mr. Kinnell must attach to any "Motion for Leave to File Pleading" a copy of this Order containing the filing restrictions in this case. If a copy of this Order is not attached so that the clerk is made immediately aware of these restrictions before filing the motion or pleading, the document will be stricken once the noncompliance is discovered by the clerk or the court.

**IT IS THEREFORE ORDERED** that the materials received by the clerk of the court from Mr. Kinnell listed by date and title herein and not yet filed, be returned to Mr. Kinnell without filing because they are not in compliance with the filing restrictions in this case.

**IT IS FURTHER ORDERED** that after the entry of this Order the only pro se pleading that will be accepted from Mr. Kinnell for filing herein is a single-paged "Motion for Leave to File Pleading" that complies with the restrictions more fully set forth in the foregoing Order.

The Clerk is directed to flag this case with the "PreFiling Restrictions" flag, and to return any paper received from Mr. Kinnell for filing in this case that is not a single-paged "Motion for Leave to File Pleading" with a copy of this Order attached. The Clerk should make a text-only entry on the docket each time she or he returns non-complying papers to Mr. Kinnell without filing.

**IT IS SO ORDERED.**

Dated this 10th day of July, 2008, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge