

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

REV. DR. KAMEL K. K. ROY,)
)
 Plaintiff,)
)
 vs.)
)
BH OBAMA, et al.,)
)
 Defendants.)
_____)

Civ. NO. 09-00041 SOM/BMK

ORDER DISMISSING COMPLAINT
AND DENYING PLAINTIFF'S
APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES

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On January 29, 2009, Plaintiff Rev. Dr. Kamel K. K. Roy filed a Complaint and an Application To Proceed Without Prepayment of Fees ("Application"). The court DISMISSES his Complaint without prejudice and DENIES the Application as moot.

I. DISCUSSION.

A court may deny leave to proceed in forma pauperis at the outset if it appears from the facts of the proposed complaint that the action is frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). See Tripati v. First Nat'l Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987) (citing Reece v. Washington, 310 F.2d 139, 140 (9th Cir. 1962)).

Roy's Complaint is utterly confusing, consists of illegible handwritten notations, and is incomprehensible. The Complaint is not "a short and plain statement of the claim"

showing that he is entitled to relief. See Fed. R. Civ. P. 8(a). No viable factual or legal theory is stated, and no basis for relief is articulated. As Roy's Complaint is basically incomprehensible, it is dismissed pursuant to 28 U.S.C. § 1915. See Denton v. Hernandez, 504 U.S. 25, 32 (1992) (the in forma pauperis statute "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless. . . . Examples of the latter class. . . are claims describing fantastic or delusional scenarios").

Given the dismissal of the Complaint, Roy's Application is moot. Even if it were not moot, it would be denied. Roy has failed to establish that he is entitled to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1). "When a claim of poverty is made under section 1915 'it is proper and indeed essential for the supporting affidavits to state the facts as to affiant's poverty with some particularity, definiteness and certainty.'" United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) (citing Jefferson v. United States, 277 F.2d 723, 725 (9th Cir. 1960)). Roy refers to retirement and disability payments, but the details of those payments are difficult to comprehend.

Roy is granted leave to file an Amended Complaint no later than February 13, 2009. In any Amended Complaint, Roy should clearly state the relief he is seeking, as well as allege the factual basis demonstrating that he is entitled to relief. Roy may not simply incorporate the dismissed Complaint in a new document. The Amended Complaint must be a document complete in itself. Additionally, Roy should consider writing in a very simple manner that will allow the court to understand his claims.

II. CONCLUSION.

For the foregoing reasons, the court DISMISSES the Complaint and DENIES as moot Roy's Application To Proceed Without Prepayment of Fees. Roy is given leave to amend his Complaint to state viable claims, as well as to file another Application or pay the appropriate filing fee, by February 13, 2009. If Roy fails to (1) amend his Complaint and (2) pay the filing fee or submit another Application by February 13, 2009, his action will automatically be dismissed.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 30, 2009.



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

Rev. Dr. Kamel K. K. Roy et al. v. BH Obama, et al., Civil No. 09-00041
SOM/BMK; ORDER DISMISSING COMPLAINT AND DENYING PLAINTIFF'S APPLICATION TO
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