

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In the Matter of)
)
Fernando Fontanez)
 Plaintiff, *pro se*)

Civil Action No.
07 C 0224

EXECUTIVE COMMITTEE ORDER

The Executive Committee in this order addresses three letters submitted pro se by Fernando Fontanez dated January 18, 2007, February 20, 2007, and March 5, 2007, with regard to three orders issued by the Executive Committee, one on January 18, 2007, and two on February 12, 2007. The Executive Committee is treating each of these letters as a motion to reconsider. For the reasons stated below, the Executive Committee dismisses for lack of jurisdiction Mr. Fontanez's January 18, 2007 letter, and denies the relief sought in the February 20, 2007 and March 5, 2007 letters.

I. Executive Committee January 18, 2007 Order

On January 18, 2007, the Executive Committee issued an order barring Fernando Fontanez from filing any new civil cases as a pro se plaintiff in this District until further order of the court. Mr. Fontanez was informed that he could submit to this court a motion to modify or rescind the January 18, 2007 order no earlier than six months from the date of the order. No case filed by Mr. Fontanez prior to the entry of the January 18, 2007 order was affected by the order. Mr. Fontanez's ability to defend himself in a criminal action or his ability to file a petition for a writ of habeas corpus or other extraordinary writ was not affected. Additionally, Mr. Fontanez's access to the United States Court of Appeals or the United States Supreme Court was not limited in any way. In the January 18, 2007 order, the Executive Committee ordered the Clerk of the Court to create and maintain a miscellaneous file entitled "In the matter of Fernando Fontanez" under the case number 07 C 224. The miscellaneous file under case no. 07 C 224 serves as a repository of the January 18, 2007 order, and any other filing or order related to this matter.

II. Mr. Fontanez's January 18, 2007 Letter and January 19, 2007 Notice of Appeal

After receiving the January 18, 2007 order from the Executive Committee, Mr. Fontanez sent a letter to Chief Judge Holderman dated that same day, asking the Executive Committee to reconsider its order restricting his pro se filing of new civil cases. Chief Judge Holderman forwarded the letter to the Executive Committee for consideration, and the Executive Committee is treating the letter as a motion pursuant to Federal Rules of Civil Procedure 59(e). On January 19, 2007, the day after Mr. Fontanez sent the January 18, 2007 letter to Chief Judge Holderman, Mr. Fontanez filed a notice of appeal in the United States Appeals Court for the Seventh Circuit. The filing of a notice of appeal in a case divests this District Court of jurisdiction over issues pending on appeal. *See, e.g., Blue Cross and Blue Shield Ass'n v. American Express Co.*, 467

F.3d 634, 637 (7th Cir. 2006). Because the matters in Mr. Fontanez's Rule 59(e) motion are identical to the issues raised in Mr. Fontanez's notice of appeal, this District Court lacks jurisdiction to address the motion.

III. Executive Committee Order of February 12, 2007, Clarifying that Mr. Fontanez's Request for In Forma Pauperis Status is not a Case Filing

In miscellaneous file case no. 07 C 224, the Executive Committee on February 12, 2007, issued two further orders related to Mr. Fontanez. The first order of February 12, 2007 clarified that the restrictions on Mr. Fontanez's filing also apply to four cases that he submitted to the Clerk's Office of the U.S. District Court for Northern District of Illinois along with an application to proceed in forma pauperis ("IFP"). Those four cases are *Fontanez v. Dabe*, No. 06 C 7056 (N.D. Ill.) before Judge George M. Marovich; *Fontanez v. Ryan*, No. 06 C 7144 (N.D. Ill.) before Judge James B. Zagel; *Fontanez v. Doyle*, No. 07 C 98 (N.D. Ill.) before Judge James B. Moran; *Fontanez v. Lefkow*, No. 07 C 294 (N.D. Ill.) before Judge John W. Darrah. As explained in the Executive Committee's first order of February 12, 2007, under Local Rule 3.3, a complaint is considered filed on the date that IFP status is granted, and IFP status had not yet been conferred on Mr. Fontanez in those cases at the time the January 18, 2007 order issued. Hence, the Executive Committee concluded that the cases were not filed before the date of the January 18, 2007 order barring Mr. Fontanez's pro se filing of new civil cases. The Executive Committee vacated all orders in those cases and disallowed the filing of any previously unfiled case by pro se plaintiff Fernando Fontanez subsequent to the January 18, 2007 order.

VI. Executive Committee's Order of February 12, 2007, Requiring Mr. Fontanez to be Escorted in the Courthouse

The Executive Committee issued a second order on February 12, 2007, after learning further information about Mr. Fontanez's actions in the Everett McKinley Dirksen U.S. Courthouse and elsewhere. In the second February 12, 2007 order, the Executive Committee required Mr. Fontanez to be accompanied by a representative of the U.S. Marshal Service when he is present in the Everett McKinley Dirksen U.S. Courthouse at 219 South Dearborn Street, Chicago, IL 60604. The second order of February 12, 2007 reiterated that Mr. Fontanez's ability to defend himself in a criminal action or his access to the United States Court of Appeals for the Seventh Circuit was not affected. In issuing the second February 12, 2007 order requiring Mr. Fontanez to be escorted by a representative of the U.S. Marshal while in the Dirksen U.S. Courthouse, the Executive Committee relied on information that had been brought to its attention. Based on an attachment of a police report to the complaint in *Fontanez v. Federal Bureau of Investigation*, No. 06 C 6982 (N.D. Ill.) before Judge Charles P. Kocoras, the Executive Committee learned that Mr. Fontanez had allegedly called in a bomb threat to the Sears Tower. In addition, based on an Illinois Department of Corrections ("IDOC") October 16, 2006 Parole Violation Report attached to the complaint in *Fontanez v. Dabe*, No. 06 C 7056, the Executive Committee became aware that Mr. Fontanez had been arrested in June 2006 for allegedly making death threats against Governor Rod Blagojevich, and had tried to or succeeded in contacting First Lady Laura Bush and the U.S. Supreme Court. The letter addressed to Justice Antonin Scalia and sent in July 2006 to the U.S. Supreme Court contained two toy machine guns and text stating that Mr. Fontanez "had brutally murdered individuals in the past." Because of

these incidents, the Executive Committee decided that the security of the Dirksen U.S. Courthouse and the people in the Courthouse required that Mr. Fontanez be accompanied by a representative of the U.S. Marshal's Office or by a Court Security Officer when he is in the Dirksen U.S. Courthouse.

V. Mr. Fontanez's Letters dated February 20, 2007 and March 5, 2007

In response to the February 12, 2007 Executive Committee orders, Mr. Fontanez sent two letters addressed to Chief Judge Holderman, on February 20, 2007 and March 5, 2007, respectively. Chief Judge Holderman forwarded Mr. Fontanez's letters to the Executive Committee. In both those letters, Mr. Fontanez seeks reconsideration of the Executive Committee's order holding that the four cases in which he had not been granted IFP status as of January 18, 2007 were subject to the January 18, 2007 order, and the Executive Committee's assignment to Mr. Fontanez of an escort while he is in the Dirksen U.S. Courthouse.

Mr. Fontanez first argues in both his February 20, 2007 and March 5, 2007 letters that the four identified cases were "in existence" prior to the issuance of the January 18, 2007 Executive Committee order, and should not be affected by the bar imposed in that order against his filing new civil cases pro se. See Fernando Fontanez, *Letter to Chief Judge James Holderman*, (February 20, 2007). Mr. Fontanez's argument is based on his misunderstanding of this court's Local Rule 3.3 and the effect of an application to proceed IFP. As explained in the Executive Committee's first order of February 12, 2007, a complaint submitted to the Clerk's Office with an application to proceed IFP is not considered "filed" until the date that IFP status is conferred. L.R. 3.3(d). The exception set forth in Rule 3.3 regarding the date of filing—where the complaint must be filed within a time limit and the order granting leave to file is entered after the expiration of that time limit—is not applicable to Mr. Fontanez's case. L.R. 3.3(d). The January 18, 2007 order, not the expiration of the statute of limitations, barred the filing by Mr. Fontanez of any new pro se civil cases. The cases in which he sought but had not been granted IFP status on or before January 18, 2007 had not been filed under the rules of this District Court as of January 18, 2007, the date of the bar. Any subsequent filing of any of those cases through the granting of an IFP application submitted by Mr. Fontanez violated the January 18, 2007 bar and was a nullity.

In his February 20 and March 5, 2007 letters, and at a March 8, 2007 hearing in open court in the case, *Fontanez v. Khoushaba*, No. 07 C 976, before Chief Judge James F. Holderman, (a case not affected by the January 18, 2006 bar because it was removed by the defendant from state court), Mr. Fontanez also challenged the requirement that an escort accompany him at all times when he is in the Dirksen U.S. Courthouse, arguing that the allegations relied upon by the Executive Committee in its second order of February 12, 2007 are false. According to Mr. Fontanez, he has been falsely accused of calling in a bomb threat to the Sears Tower by a "Domestic Terrorist Racketeering Influenced Corrupt Organization." In addition, Mr. Fontanez claims that the letter that he sent to Justice Scalia, enclosing the toy guns and talking about "brutally murdered [] individuals," should have been understood to be humorous by the U.S. Supreme Court.

Despite Mr. Fontanez's contentions otherwise, the Executive Committee's responsibility

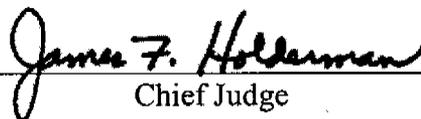
to the safety of all judges, employees and citizens inside the Dirksen U.S. Courthouse justifies the minimal intrusion of requiring Mr. Fontanez to be escorted while inside the Courthouse based on the information available to the Executive Committee. *See Day v. Chicago Bd. of Educ.*, No. 97 C 6296, 1998 WL 60770, *6 (N.D. Ill. Feb. 5, 1998). According to the IDOC Parole Violation Report attached to the complaint in 06 C 7056, Mr. Fontanez has been questioned for possessing threatening letters to various judges, Vice President Dick Cheney, and Governor Blagojevich, and what appeared to be a "love letter" to First Lady Laura Bush. Furthermore, contrary to Mr. Fontanez's belief that the U.S. Supreme Court should have found his letter to Justice Scalia to be humorous, an individual at the U.S. Supreme Court contacted the IDOC to inform the IDOC of Mr. Fontanez's letter. The Parole Violation Report also described several attempts by Mr. Fontanez to talk with Judge Joan Humphrey Lefkow, which raises a specific concern for the safety of the judges of this U.S. Courthouse. Based on the IDOC's report, the Executive Committee, in its responsibility to the safety of those individuals inside the Courthouse, finds a more-than-adequate basis for requiring the minimal intrusion to Mr. Fontanez of an escort. Furthermore, requiring that a representative of the U.S. Marshal Service escort Mr. Fontanez does not prohibit Mr. Fontanez from entering the public areas of the Dirksen U.S. Courthouse, prevent him from filing matters in already-pending cases, or from appearing in court. Mr. Fontanez's request for reconsideration of the Executive Committee's second order of February 12, 2007, requiring that a representative of the U.S. Marshal escort Mr. Fontanez when he is in the Dirksen U.S. Courthouse, is denied.

Finally, to the extent Mr. Fontanez renews in his letters dated February 20, 2007 and March 5, 2007 his arguments against the Executive Committee's January 18, 2007 order barring the filing of new civil cases pro se that is now on appeal, the Executive Committee again has no jurisdiction to reconsider these issues that are currently on appeal. *See, e.g., Blue Cross and Blue Shield Ass'n*, 467 F.3d at 637.

VI. Conclusion

Accordingly, Mr. Fontanez's January 18, 2007 letter is dismissed for lack of jurisdiction. To the extent that Mr. Fontanez's February 20, 2007 and March 5, 2007 letters also ask the Executive Committee to reconsider its January 18, 2007 order, those letters are dismissed for lack of jurisdiction. Otherwise, Mr. Fontanez's February 20, 2007 and March 5, 2007 letters are denied.

ENTER:
FOR THE EXECUTIVE COMMITTEE


Chief Judge

Dated at Chicago, Illinois this 13th day of March, 2007