S.D.N.Y. – N.Y.C.
17-cv-9861
17-cv-9862
17-cv-9863
17-cv-9864
17-cv-9865
17-cv-9866
McMahon, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of May, two thousand eighteen.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Denny Chin,
Circuit Judges.

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v. 18-287

Howard A. Zucker, M.D. J.D., Commissioner of New York State Department of Health Office of Professional Medical Conduct,

Defendant-Appellee.

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v. 18-291

R.N. Sally Dreslin, M.S., Office of Professional Medical Conduct,

Defendant-Appellee.

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v.

Mary Ellen Elia, Commissioner O.P.D., Board of Regents, Education,

Defendant-Appellee.

18-295

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v.

Leslie M. Arp, Chief Investigating Unit,

Defendant-Appellee.

18-304

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v.

Catherine Leahy Scott, Inspector General,

Defendant-Appellee.

18-306

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v.

Governor Andrew Cuomo, New York State, Albany,

Defendant-Appellee.

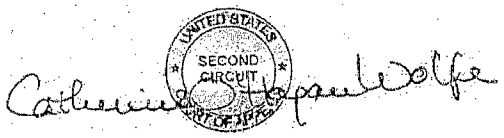
18-308

The proceedings docketed under 18-287, 18-291, 18-295, 18-304, 18-306, and 18-308 are consolidated for purposes of this order.

Appellant, pro se, moves for in forma pauperis status, appointment of counsel, damages, and a "bar order" in these six appeals from sua sponte dismissals of his actions. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeals are DISMISSED as frivolous because they "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

Appellant has filed a number of frivolous matters in this court. This Court already held that the appeals docketed under 17-2831 and 17-3128 were frivolous. Appellant has the following frivolous appeals pending: 17-3533, 17-3547, 17-4031, 18-287, 18- 291, 18-295, 18-304, 18-306, and 18-308. Accordingly, Appellant is hereby warned that the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers, will result in the imposition of a sanction, which may require Appellant to obtain permission from this Court prior to filing any further submissions in this Court (a "leave-to-file" sanction). *See In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993); *Sassower v. Sansverie*, 885 F.2d 9, 11 (2d Cir. 1989).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE GREGORY D. KILPATRICK.

17-CV-9861; 17-CV-9862;
17-CV-9863; 17-CV-9864;
17-CV-9865; 17-CV-9866 (CM)

BAR ORDER UNDER
28 U.S.C. § 1651

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed these six actions *pro se*. On January 3, 2018, the Court dismissed them as frivolous, noted that Plaintiff had filed ten other cases that were dismissed as frivolous, and ordered Plaintiff to show cause within thirty days why he should not be barred from filing further actions *in forma pauperis* (IFP) in this Court without prior permission.[1] On January 30, 2018, Plaintiff filed a notice of appeal in every case, and he has filed eight new complaints, but he has not responded to the order to show cause.

A. Defective Appeal

As a general rule, "[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). "The divestiture of jurisdiction rule is, however, not a per se rule. It is a judicially crafted rule rooted in the interest of judicial economy . . . ." *United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996). For example, the rule "does not apply where an appeal is frivolous[,][n]or does it apply to untimely or otherwise defective appeals." *China Nat. Chartering Corp. v. Pactrans Air & Sea, Inc.*, 882 F. Supp. 2d 579, 595 (S.D.N.Y. 2012) (citation omitted).

[1] Plaintiff did not submit the $400.00 in fees required to commence a civil action in this Court. The Court proceeded on the assumption that Plaintiff sought to proceed without the prepayment of fees (IFP).

Because Plaintiff is attempting to appeal from a nonfinal order that has not been certified for interlocutory appeal, the notice of appeal is plainly defective, and this Court retains jurisdiction over this action. *See, e.g., United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming a notice of appeal from a nonfinal order to be "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction); *Gortat v. Capala Bros., Inc.*, No. 07-CV-3629 (ILG), 2008 WL 5273960, at *1 (E.D.N.Y. Dec. 18, 2008) ("An exception . . . [to the general rule that an appeal deprives a district court of jurisdiction] applies where it is clear that the appeal is defective, for example, because the order appealed from is not final and has not been certified for an interlocutory appeal."). Accordingly, the Court retains jurisdiction over these cases.

B. Certification for Interlocutory Appeal

Certification of an interlocutory order for immediate appeal is governed by 28 U.S.C. § 1292(b). Under that statute, certification is only appropriate if the district court determines: "(1) that such order involves a controlling question of law; (2) as to which there is a substantial ground for difference of opinion; and (3) that an immediate appeal from [that] order may materially advance the ultimate termination of the litigation." *In re Facebook, Inc., IPO Sec. and Derivative Litg.*, 986 F. Supp. 2d 524, 529 (S.D.N.Y. 2014) (quoting 28 U.S.C. § 1292(b)). Because "interlocutory appeals are strongly disfavored in federal practice," *In re Ambac Fin. Grp., Inc. Sec. Litig.*, 693 F. Supp. 2d 241, 282 (S.D.N.Y. 2010), the requirements of § 1292(b) must be strictly construed, and "only exceptional circumstances will justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Alphonse Hotel Corp. v. Tran*, No. 13-CV-7859 (DLC), 2014 WL 516642, at *3 (S.D.N.Y. Feb. 10, 2014) (quoting *Flor v. BOT Fin. Corp.*, 79 F.3d 281, 284 (2d Cir. 1996)). The proponent of an

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