

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DONALD CAIN,)	
)	
Plaintiff,)	
)	
v.)	1:20-cv-00070-JAW
)	
HUNTER TZOVARRAS, et al.,)	
)	
Defendants)	

**RECOMMENDED DECISION AFTER REVIEW OF
COMPLAINT PURSUANT TO 28 U.S.C. § 1915(e)**

Plaintiff seeks to recover for damages allegedly resulting from negligent legal representation in a criminal proceeding in this Court. (Complaint, ECF No. 1.) In 2018, after Plaintiff pled guilty to a criminal charge, the Court sentenced Plaintiff to a term of imprisonment, which term he is currently serving. Plaintiff has joined as defendants his former attorney, Hunter Tzovarras, and Bryan Kirsch, whom Plaintiff identifies as an “insurance agent/attorney.” (*Id.*)

Plaintiff filed an application to proceed in forma pauperis (ECF No. 7), which application the Court granted. (ECF No. 8.) In accordance with the in forma pauperis statute, a preliminary review of Plaintiff’s complaint is appropriate. 28 U.S.C. § 1915(e)(2).

Following a review of Plaintiff’s complaint pursuant to 28 U.S.C. § 1915(e)(2), I recommend the Court dismiss Plaintiff’s complaint against Defendant Kirsch.

Discussion

The federal in forma pauperis statute, 28 U.S.C. § 1915, is designed to ensure meaningful access to the federal courts for those persons unable to pay the costs of bringing an action. When a party is proceeding in forma pauperis, however, “the court shall dismiss the case at any time if the court determines,” *inter alia*, that the action is “frivolous or malicious” or “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)(B). “Dismissals [under § 1915] are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

When considering whether a complaint states a claim for which relief may be granted, courts must assume the truth of all well-plead facts and give the plaintiff the benefit of all reasonable inferences therefrom. *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A complaint fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Although a pro se plaintiff’s complaint is subject to “less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519, 520 (1972), this is “not to say that pro se plaintiffs are not required to plead basic facts sufficient to state a claim,” *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980). To allege a civil action in federal court, it is not enough for a plaintiff merely to allege that a defendant acted unlawfully; a plaintiff must affirmatively allege facts that identify the manner by which the

defendant subjected the plaintiff to a harm for which the law affords a remedy. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Here, Plaintiff has not alleged that Defendant Kirsch represented him during the criminal proceeding and has not otherwise alleged any facts that would support a claim against Defendant Kirsch. Accordingly, the dismissal of any claims against Defendant Kirsch is appropriate.

Conclusion

Based on the foregoing analysis, after a review in accordance with 28 U.S.C. § 1915, I recommend the Court dismiss Plaintiff's complaint against Defendant Kirsch.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed finds or recommended decisions entered pursuant to 28 U.S.C. Section 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

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.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 1st day of June, 2020.