UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GARY LAPOINTE,	)	
	)	
Plaintiff	)	
	)	
v.	)	2:20-cv-00013-GZS
	)	
SOCIAL SECURITY ADMINISTRATION COMMISSIONER, et al.,	)	
	)	
Defendants	)	

RECOMMENDED DECISION AFTER REVIEW OF PLAINTIFF'S COMPLAINT

Plaintiff asks this Court to review the decision of the Social Security Administration Commissioner to deny Plaintiff's claim for disability benefits. (Complaint, ECF No. 1.) In his complaint, Plaintiff also named his former attorney, Bill Gordon, and his attorney's law firm, Bill Gordon & Associates, LLC, as defendants (the lawyer defendants). (Complaint at 3.) Plaintiff alleges the lawyer defendants "breached their duty in adequate representation." (Complaint at 6.)

Plaintiff filed an application to proceed in forma pauperis (ECF No. 4), which application the Court granted. (ECF No. 6.) 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' complaint, I recommend the Court dismiss Plaintiff's claim against Bill Gordon and Bill Gordon & Associates, LLC, but permit Plaintiff to proceed on his claim against the Social Security Administration Commissioner.

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, a court 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).

First, because the Court's review of the denial of Plaintiff's claim for social security benefits consists of a review of the administrative record and does not contemplate discovery and an evidentiary hearing, the joinder of the claims against the Social Security Administration Commissioner and the lawyer defendants is not required nor should it be permitted. See Fed. R. Civ. P. 19; Fed. R. Civ. P. 20.

Furthermore, Plaintiff's claim against the lawyer defendants (i.e., they "breached their duty in adequate representation") constitutes a conclusory statement unsupported by any facts. "Though … pro se complaints are to be read generously, allegations of conspiracy must nevertheless be supported by material facts, not merely conclusory statements." Slotnick v. Garfinkle, 632 F.2d 163, 165 (1st Cir. 1980) (citation omitted). Additionally, the pleading rules "demand[] more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. In short, Plaintiff's allegations against the lawyer defendants are "devoid of [the] further factual enhancement" necessary to state a cause of action against the lawyer defendants. Iqbal, 556 U.S. at 678 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007) (internal quotation marks omitted)).

CONCLUSION

Based on the foregoing analysis, after a review of Plaintiff's complaint pursuant to 28 U.S.C. § 1915, I recommend the Court dismiss Plaintiff's claims against Defendants Bill Gordon and Bill Gordon & Associates, LLC, but permit Plaintiff to proceed on his claim against the Social Security Administration Commissioner.

NOTICE

> A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 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 23rd day of January, 2020.