

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JOHN L. JACKSON, III,

Plaintiff,

vs.

Case No. 4:10cv330-RH/WCS

STATE OF FLORIDA, et al.,

Defendants.

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REPORT AND RECOMMENDATION

Plaintiff, proceeding *pro se*, submitted a civil rights complaint, doc. 1, on August 6, 2010. It took until October 27, 2010, for Plaintiff to submit the initial partial filing fee, doc. 7, and thus, only now has Plaintiff's complaint been reviewed.

Plaintiff is currently detained in the Duval County Jail. Doc. 1. It appears that Plaintiff is still facing criminal charges. All of the Defendants named are employed by the Duval County Sheriff's Office, although improperly identified by Plaintiff as police officers with the Sheriff's Office. Doc. 1. The events transpired in Duval County, Florida as well. Because Duval County is located in the Middle District of Florida, as are each of the Defendants, the proper forum for this action pursuant to 28 U.S.C. § 1391(b) and

28 U.S.C. § 89(b) is in the United States District Court for the Middle District of Florida, Jacksonville Division.

A federal district court has the authority under 28 U.S.C. § 1406(a) to transfer a case to another district or division "in which it could have been brought." The Eleventh Circuit has recognized the court's ability to raise the issue of defective venue *sua sponte*, but limited the court's ability to dismiss an improperly filed case for lack of venue without giving the parties an opportunity to respond. Lipofsky v. New York State Workers Comp. Bd., 861 F.2d 1257, 1259 (11th Cir. 1988) (stating "a district court may raise on its own motion an issue of defective venue or lack of personal jurisdiction; but the court may not dismiss without first giving the parties an opportunity to present their views on the issue.") The Lipofsky court did not place the same limitations on the court's ability to transfer a case to the appropriate forum pursuant to 28 U.S.C. § 1404(a). See Lipofsky, 861 F.2d at 1259, n. 2. Thus, it is recommended that the case be transferred rather than dismissed.

In light of the foregoing, and pursuant to 28 U.S.C. §§ 1404(a) and 1406(a), the undersigned respectfully **RECOMMENDS** transfer of this action to the United States District Court for the Middle District of Florida, Jacksonville Division, for all further proceedings.

IN CHAMBERS at Tallahassee, Florida, on November 3, 2010.

s/ William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.