

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**EX PARTE JOSEPH CHAYOON**

**Case No. 6:06-cv-1812-Orl-19JGG**

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**REPORT AND RECOMMENDATION**

**TO THE UNITED STATES DISTRICT COURT**

This cause came on for consideration without oral argument on the following motion:

**MOTION: MOTION TO PROCEED IN FORMA PAUPERIS (Doc. No. 2)**

**FILED: November 28, 2006**

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**THEREON it is RECOMMENDED that the motion be DENIED. It is further RECOMMENDED that the complaint be dismissed with prejudice as frivolous.**

Plaintiff, Joseph Chayoon, filed a *pro se* petition for Declaratory Judgment and an Application to Proceed Without Prepayment of Fees. Docket 1, 2. Chayoon's petition names no defendant in the caption or the body of the complaint. Rather, Chayoon, who lives in Rhode Island, has received a job offer from an unnamed Florida-based Indian casino. Docket 1 at 1. Chayoon asks the Court to determine whether employees of Indian casinos are protected by federal labor laws. Docket 1 at 3. Chayoon states his decision of whether to accept the offered employment depends on the Court's ruling on his Petition. Docket 1 at 1.

The United States Congress has required that the district court review a civil complaint filed *in forma pauperis*, and shall dismiss a complaint that is frivolous, malicious, or fails to state a claim. *See* 28 U.S.C. § 1915. The Local Rules of the United States District Court for the Middle District of Florida also govern proceedings *in forma pauperis*. *See* Local Rule 4.07. Pursuant to Local Rule 4.07 (a), the Clerk docket, assigns to a judge, and then transmits to the judge cases commenced *in forma pauperis*. Local Rule 4.07 (a). The district court assigns to United States Magistrate Judges the supervision and determination of all civil pretrial proceedings and motions. Local Rule 6.01(c)(18). With respect to any involuntary dismissal or other final order that would be appealable if entered by a district judge, the United States Magistrate Judge may make recommendations to the district judge. *Id.* The Court may dismiss the case if satisfied that the action is frivolous or malicious under 28 U.S.C. § 1915, or may enter such other orders as shall seem appropriate. Local Rule 4.07(a).

Section 1915 grants broad discretion to the district courts in the management of *in forma pauperis* cases, and in the denial of motions to proceed *in forma pauperis* when the complaint is frivolous. *Clark v. Ga. Pardons and Paroles Bd.*, 915 F.2d 636, 639 (11th Cir. 1990); *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984). Legal theories are frivolous when they are “indisputably meritless.” *Neitzke v. Williams*, 490 U.S. 319, 329 (1989); *Battle v. Central State Hosp.*, 898 F.2d 126, 129 (11th Cir. 1990), *aff’d without opinion after remand*, 114 F.3d 1200 (11th Cir. 1997). Section 1915 authorizes the dismissal of “claims of infringement of a legal interest which clearly does not exist.” *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

Chayoon’s Petition does not present a live case or controversy over which this Court has jurisdiction. U.S. CONST. art. III, § 2, cl.1. For a declaratory judgment to issue, there must be a dispute which “calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication

of present right upon established facts.” *Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) (citations omitted). Chayoon has not been deprived of any alleged right, but only seeks this Court’s opinion about what his rights might be to assist him in making a personal decision. Chayoon’s Petition presents a classic example of a request for an advisory opinion.

**IT IS THEREFORE RECOMMENDED THAT:**

1. That the motion to proceed *in forma pauperis* be denied as frivolous;
2. That the complaint be dismissed with prejudice; and
3. The Clerk be directed to close the case.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Recommended in Orlando, Florida on November 29, 2006.

  
JAMES G. GLAZEBROOK  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Patricia C. Fawsett  
Counsel of Record  
Unrepresented Party