

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

**ERIC J. RHETT,**

**Plaintiff,**

**vs.**

**CASE NO. 1:09CV64-SPM/AK**

**FIREMANS INSURANCE CO., et al,**

**Defendants.**

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**REPORT AND RECOMMENDATION**

Plaintiff, proceeding *pro se*, has filed a complaint under 42 U.S.C. §1983 against a number of businesses and persons in New Jersey. Plaintiff resides in New Jersey. There appears to be no connection between the parties and this district. Thus, the proper forum for this action pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 110 is the United States District Court for the New Jersey.

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." A court may raise the issue of defective venue *sua sponte*, but should not 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). 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.

There is no need for a hearing on this transfer. Cf. Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986) with Starnes v. McGuire, 512 F.2d 918, 934 (D.C. Cir. 1974).

The undersigned is also of the opinion that no decision by this Court should be made on the pending motion for IFP and accompanying affidavit since the district court in New Jersey may have different forms and requirements for this process.

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 New Jersey, for all further proceedings.

**IN CHAMBERS** at Gainesville, Florida, this 17<sup>th</sup> day of March, 2009.

s/ A. KORNBLUM  
ALLAN KORNBLUM  
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO THE PARTIES**

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.