

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

**BRIAN L. YOUNG,**

**Plaintiff,**

**vs.**

**Case No. 4:07cv41-MP/WCS**

**JOE NICHOLS, et al,**

**Defendants.**

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**REPORT AND RECOMMENDATION**

Plaintiff, an inmate incarcerated in the Newton County Jail in Covington, Georgia, has submitted a civil rights complaint, doc. 1, an *in forma pauperis* motion, doc. 2, motion for appointment of counsel, doc. 5, and supporting documents, docs. 3-4. The Defendants named in this case are also located in Covington, Georgia, and the allegations concern events there as well. Doc. 1. Therefore, pursuant to 28 U.S.C. § 1391(b), the proper forum for this action is in the United States District Court for the Northern District of Georgia, Atlanta Division. 28 U.S.C. § 90(a)(2).

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 *sua sponte* 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 prior to transfer.

In light of the foregoing, and pursuant to 28 U.S.C. §§ 1406(a) and 1391(b), the undersigned respectfully **RECOMMENDS** transfer of this action to the United States District Court for the Northern District of Georgia, Atlanta Division, for all further proceedings.

**IN CHAMBERS** at Tallahassee, Florida, on February 8, 2007.

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 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.**