

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

ANTHONY L. COOPER,

Plaintiff,

vs.

CASE NOS. 4:08CV176-SPM/AK

PEGGY UNDERBRINK, et al,

Defendants.

_____ /

REPORT AND RECOMMENDATION

Plaintiff, an inmate of the Florida penal system proceeding *pro se*, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Doc. 8). He also seeks to proceed in forma pauperis. (Doc. 7).

The Prison Litigation Reform Act of 1995 (PLRA), which was enacted on April 26, 1996, provides that a prisoner may not bring a civil action *in forma pauperis* under 28 U.S.C. § 1915:

if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Plaintiff has had three or more prior prisoner actions dismissed in this district on the grounds that they were frivolous, malicious, or failed to state a claim: Case

Nos. 3:00cv51, 3:00cv89; 4:98cv197, as well as recent cases dismissed because he has already been identified as a three striker: 4:08cv85 and 3:08cv131.

The present complaint alleges "malpractice" against a number of attorneys and others. Thus, his allegations do not bring him within the "imminent danger" exception to 28 U.S.C. §1915(g), which precludes him from proceeding in forma pauperis unless he alleges such harm.

Because Plaintiff has had at least three prior dismissals and is not under imminent danger of serious physical injury, his request to proceed *in forma pauperis* should be denied and this cause of action should be dismissed. The dismissal should be without prejudice to him making the same allegations in a complaint for which he pays the full \$350.00 filing fee at the time of filing the complaint.

In light of the foregoing, it is respectfully **RECOMMENDED** that Plaintiff's motions to proceed in forma pauperis (doc. 7) be **DENIED** pursuant to 28 U.S.C. § 1915(g), and Plaintiff's complaint (doc. 8) be **DISMISSED without prejudice**.

IN CHAMBERS at Gainesville, Florida, this 7th day of October, 2008.

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.