

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

RAYVON BOATMAN,

Plaintiff,

vs.

CASE NO. 4:09CV55-SPM/AK

**JOHN DOE, DIRECTOR OF
DEPARTMENT OF CHILDREN, et al,**

Defendants.

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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. 1). He also seeks to proceed *in forma pauperis*. (Doc. 2).

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).

Despite Plaintiff's insistence that his prior case filings are "not applicable," he is clearly aware that he must report his previous case history as he has been

warned several times and had his complaints dismissed for not being truthful about this precise issue. See Doc. 11 in Case No. 4:05cv33-RH/WCS, *citing* previous dismissal for abuse of judicial process in 3:05cv201 in the United States District Court for the Middle District of Florida; Doc. 32 in Case No. 4:04cv426-RH/WCS (dismissed for failure to state a claim and for not providing previous case history; and Doc. 30 in Case No. 4:03cv261-RH/WCS (dismissed for failure to be truthful about previous case history. These cases alone establish Plaintiff as a “three striker.”

Further, a review of the present complaint does not bring him within the "imminent danger" exception. He claims that the Department of Children and Family Services and a number of doctors and social workers have kidnaped him.

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 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 motion to proceed *in forma pauperis*, doc. 2, be **DENIED** pursuant to 28 U.S.C. § 1915(g), and Plaintiff's complaint, doc. 1, be **DISMISSED without prejudice**.

IN CHAMBERS at Gainesville, Florida, this 21st day of April, 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.