

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

CLIFF O. HANSON,

Plaintiff,

v.

CASE NO. 4:09cv126-SPM/WCS

OWEN MCCAUL
and ADAM RUIZ,

Defendants.

_____ /

ORDER

THIS CAUSE comes before the Court for consideration of the magistrate judge's order, report and recommendation (doc. 19) dated August 17, 2009.

Plaintiff has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Plaintiff filed a cover letter (doc.20) in response to the report and recommendation, as well as a new complaint (doc. 21) and a motion requesting appointment of counsel (doc.22). The Court will treat all of these documents as Plaintiff's objection.

Having considered the objection and the report and recommendation, I have determined that the report and recommendation should be adopted. Plaintiff's explanation that he used "N/A" in some spaces to indicate he did not

have complete information does not explain his failure to list three other federal cases that he had previously filed (4:07cv287-RH/WCS, 4:07cv403-RH/WCS, 4:03cv281-WS/WCS). Second, even if, as Plaintiff argues, he was not deliberately untruthful, his failure to list the three cases in any way demonstrates a reckless disregard of the requirements of litigation in federal court. Apparently, Plaintiff did not take seriously his attestation under penalty of perjury that the information contained in his complaint form was true and correct. He did not heed the warning on the complaint form that if he was “unsure of any prior cases . . . that fact must be disclosed as well.” Doc. 1 at page 5. Otherwise, at the very least, Plaintiff would have alerted the Court to the possibility of other cases. Instead, Plaintiff filed the complaint without giving any indication that he had other cases that he did not list because he lacked information about them.

Plaintiff should note that the dismissal of his complaint is without prejudice, which means Plaintiff can refile the complaint as a new case. Plaintiff should take care, however, to carefully research his claims to ensure that they are legally viable before refiling.

Accordingly, it is hereby ORDERED as follows:

1. The magistrate judge’s report and recommendation (doc.19) is ADOPTED and incorporated by reference in this order.
2. This case is dismissed without prejudice as malicious for Plaintiff’s failure to honestly and completely disclose all prior cases he has filed.

3. The clerk shall note on the docket that this case was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

4. The motion to appoint counsel (doc. 22) is denied as moot.

DONE AND ORDERED this 16th day of September, 2009.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge