

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIC GRIFFIN,)	
)	
Plaintiff,)	2:10-cv-01253-GMN-LRL
vs.)	
LAS VEGAS REVIEW JOURNAL)	ORDER
Defendant.)	

2:10-cv-01253-GMN-LRL
ORDER

This is a prisoner civil rights action. Plaintiff has failed to submit an application to proceed *in forma pauperis* on the required form. See 28 U.S.C. § 1915(a)(1)-(2); Local Rules of Special Proceedings 1-1, 1-2. Instead, plaintiff has filed a document styled “motion to proceed without *in forma pauperis*” (docket #1).¹ As set forth below, even in the absence of an application to proceed *in forma pauperis*, the court must dismiss the complaint with prejudice as factually frivolous. The court now reviews the complaint as well as a motion for counsel.

I. Plaintiff’s Motion for Appointment of Counsel

Plaintiff has filed an “emergency motion for counsel,” seeking the appointment of counsel in this case (docket #2). A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 13253 (9th Cir. 1981). In very limited circumstances, federal courts are empowered to request an attorney to represent an indigent civil litigant. The circumstances in which a court will make such a request, however, are exceedingly rare, and the court will make the request under only extraordinary circumstances. *United States v. 30.64 Acres of Land*,

¹The court notes that plaintiff asks to proceed without paying the filing fee “due to the misconduct and the medical need of plaintiff,” but the complaint does not allege any medical issue. Because, as will be discussed, plaintiff’s complaint must be dismissed as delusional and factually frivolous, plaintiff’s “motion to proceed *in forma pauperis*” is rendered moot.

1 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

2 A finding of such exceptional circumstances requires that the court evaluate both the likelihood
3 of success on the merits and the plaintiff's ability to articulate his claims in *pro se* in light of the
4 complexity of the legal issues involved. Neither factor is dispositive, and both must be viewed together
5 in making a finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)(citing *Wilborn, supra*, 789
6 F.2d at 1331). The district court has considerable discretion in making these findings. The court will
7 not enter an order directing the appointment of counsel. As discussed below, plaintiff's complaint must
8 be dismissed with prejudice as factually frivolous. Plaintiff's motion for the appointment of counsel is
9 denied.

10 **II. Screening Standard**

11 Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's
12 claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state
13 a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune
14 from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis
15 either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss
16 a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual
17 contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a constitutional claim,
18 however inartfully pleaded, has an arguable legal and factual basis. *See Jackson v. Arizona*, 885 F.2d
19 639, 640 (9th Cir. 1989).

20 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings
21 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21
22 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). All
23 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner's claims
24 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are
25 untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement of a legal
26 interest which clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*

1 fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932
2 F.2d 795, 798 (9th Cir. 1991). Moreover, “a finding of factual frivolousness is appropriate when the
3 facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially
4 noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a
5 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint
6 with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
7 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
8 1995).

9 **III. Instant Complaint**

10 Plaintiff, who is detained at the North Las Vegas Detention Center (“NLVDC”), has named as
11 defendants the Las Vegas Review Journal (“Review Journal”) and Doe defendants. Plaintiff’s rambling
12 complaint is difficult to decipher, but he appears to allege that the Review Journal “ran an ad” falsely
13 stating that plaintiff was guilty of a crime, which biased the grand jury that returned an indictment
14 against plaintiff. Allegations include that the newspaper deprived plaintiff of his right to a fair trial and
15 failed to report that he is being held hostage and tortured, that

16 fbi/AAG welsh is refusing to investigate our arrest suspect who
17 federal express 4 fake U.S. postal money order to Mr. Griffin home and
18 also mailed Mr. Griffin corporate check from Canada with Wells Fargo
19 as the bank on the check which the check was for 30 thousand dollars .
20 . . . [that] Canadian investigators had evidence that the use of these
21 banned weapons which murder infant Jaden Austin and killed a veteran
22 Herbert Decker and now is being used on Mr. Griffin from the same
house hold and other citizen was being ordered by the White House as
a part of the NSA illegal spy program and the CIA and FBI torture program
. . . . and [that] Mr. Griffin had a major contract with a company . . . to
make a counter weapon for citizen and soldiers and victims of these cover
weapons but the White House made them stop working on this counter
weapon. . . .

23 The court notes plaintiff’s lengthy history as a litigant before this court. Court records indicate
24 that plaintiff has filed at least twenty-five actions in this court, prior and subsequent to his detention.
25 (*See, e.g., Griffin, et al. v. Steward, et al.*, 2:06-cv-00122-KJD-RJJ; *Griffin et al. v. Dept. of Defence*
26 [*sic*] *et al.*, 2:07-cv-01266-RLH-RJJ; *People of Iran et al. v. United States Department of Justice, et al.*,

1 2:10-cv-00087-RCJ-PAL; *People of China et al. v. United States Department of Justice, et al.*, 2:10-cv-
2 00091-JCM-PAL). Numerous complaints filed by plaintiff have been dismissed with prejudice for
3 setting forth fantastic and delusional claims that lack any tenable legal theory. (*See, e.g., Griffin v. Bush*,
4 2:07-cv-00617-RCJ-GWF (dismissing with prejudice “based on an indisputably meritless legal theory
5 and frivolity” complaint that included allegations that President George W. Bush was involved in
6 injecting plaintiff’s brain with chemicals used to place subliminal and hypnotic messages into his brain
7 causing torture and mind control) (docket #s 3, 7); *Griffin v. White House, et al.*, 2:08-cv-00303-RCJ-
8 GWF (dismissing with prejudice “based on an indisputably meritless legal theory and frivolity”
9 complaint that included allegations that plaintiff was being held hostage by “voice to skull/mkultra” an
10 alleged biological weapon and that Dick Cheney “violated” him by not informing Senator Reid’s office
11 to aid plaintiff by removing the banned biological weapon) (docket #s 2, 4); *Griffin v. Leavitt et al.*,
12 2:09-cv-00845-PMP-GWF (dismissing with prejudice as “fantastic, delusional, and irrational” complaint
13 that alleged torture by “Voice-to-Skull technology”) (docket #s 5, 11); *Griffin et al. v. Pro*, 2:09-cv-
14 01126-RCJ-GWF (noting that plaintiff has filed numerous lawsuits with this court alleging that he is
15 being tortured by technological devices or chemicals that allow the government to eavesdrop on plaintiff,
16 and dismissing with prejudice as “fantastic, delusional and irrational” complaint that included allegations
17 that the court has covered up a “RICO Act crime” that resulted in several deaths and the ongoing assault
18 of plaintiff) (docket #s 5, 8)).

19 Here, lack of an application to proceed *in forma pauperis* notwithstanding, the court finds that
20 plaintiff’s allegations are fantastic, delusional and irrational. This complaint must be dismissed with
21 prejudice as frivolous, as it is clear from the face of the complaint that the deficiencies cannot be cured
22 by amendment. The court need not reach the issue of the propriety of attempting to name the Review
23 Journal as defendant in this action.

24 **IV. Conclusion**

25 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the complaint (docket #1-1).

26 **IT IS FURTHER ORDERED** that plaintiff’s complaint is **DISMISSED with prejudice** as

1 delusional and factually frivolous.

2 **IT IS FURTHER ORDERED** that plaintiff's motion to proceed without *in forma pauperis*
3 (docket #1) is **DENIED**.

4 **IT IS FURTHER ORDERED** that plaintiff's "emergency motion for counsel" (docket #2) is
5 **DENIED**.

6 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and close
7 this case.

8 DATED this 9th day of August, 2010.

9
10 
11 _____
12 GLORIA M. NAVARRO
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26