

1
2
3
4
5
6
7
8
9
10
11

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

JOHN MILLER,)	
)	
Plaintiff,)	
)	2:10-cv-01620-PMP-LRL
v.)	
)	ORDER
FREDERICK LEISSLER,)	
)	
Defendant.)	
)	

Plaintiff has submitted an Application to Proceed *In Forma Pauperis* and a Complaint (#1) using the court’s § 1983 civil rights complaint form. The court finds that plaintiff is unable to prepay the filing fee. Further, although the court will dismiss the Complaint, it will do so without prejudice to allow plaintiff to cure the deficiencies listed below.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that she is unable to prepay fees and costs or give security for them. Accordingly, her request to proceed *in forma pauperis* will be granted pursuant to § 1915(a).

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. § 1915(e)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) (internal quotations and

1 citation omitted).

2 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
3 material allegations in the complaint are accepted as true and are to be construed in the light most
4 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a
5 pro se complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines*
6 *v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). When a court dismisses a complaint under § 1915(e),
7 the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
8 unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment.
9 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

10 Pursuant to § 1983 plaintiff brings a civil rights complaint against Frederick Leissler. The
11 substance of plaintiff's allegations reveals, however, that he is not alleging a civil rights violation under
12 § 1983. Instead, plaintiff accuses Leissler of the crime of conversion for allegedly taking control of
13 plaintiff's paintings, U.S. mint coins, and art supplies, among other things. Plaintiff does not establish
14 that the allegations are traceable to the state. *See Blum v. Yaretsky*, 457 U.S. 991, 1002-12 (1982)
15 (private persons who are not government officials may be sued under § 1983, but they and their actions
16 must be very closely tied to the government in order to be considered "acting under color of state law").
17 Nor has plaintiff alleged a violation of any other federal law. Hence, plaintiff's Complaint must be
18 dismissed for failure to state a claim upon which relief may be granted under § 1983. Plaintiff will,
19 however, be given an opportunity to amend his Complaint. The amended complaint must cure the
20 deficiencies listed above.

21 Accordingly, and for good cause shown,

22 IT IS ORDERED that plaintiff's Application to Proceed *In Forma Pauperis* (#1) is GRANTED.

23 IT IS FURTHER ORDERED that plaintiff is permitted to maintain the action to conclusion
24 without necessity of prepayment of any additional fees, costs, or security. This Order granting *forma*
25 *pauperis* status shall not extend to the issuance of subpoenas at government expense.

26 IT IS FURTHER ORDERED that the Clerk of Court shall file the complaint.

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

IT IS FURTHER ORDERED that the Complaint will be dismissed without prejudice.

IT IS FURTHER ORDERED that plaintiff shall file an amended complaint by November 24, 2010, or his case may be dismissed with prejudice.

DATED this 25th day of October, 2010.



LAWRENCE R. LEAVITT
UNITED STATES MAGISTRATE JUDGE