

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WOODROW FLEMMING,

Plaintiff,

**9:14-cv-384
(GLS/ATB)**

v.

RICHARD RENDLE et al.,

Defendants.

ORDER

The above-captioned matter comes to this court following an Order and Report-Recommendation (R&R) by Magistrate Judge Andrew T. Baxter, duly filed on August 13, 2015. (Dkt. No. 29.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

While plaintiff *pro se* Woodrow Flemming filed a document that he labeled "Objection to Report and Recommendation," (Dkt. No. 31), the R&R recommends a disposition that is fully favorable to Flemming. Accordingly, and having reviewed the R&R for clear error, it is adopted in its entirety. However, within his "objection," Flemming does seek appointment of counsel and discovery. (*Id.* at 2.) To the extent

Flemming's submission can be construed as a motion, it is denied without prejudice.

Although the constitution guarantees indigent litigants "meaningful access" to the courts, "no court has yet held 'meaningful access' to mean that indigents must always be supplied with counsel in civil as well as criminal cases." *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986). The district court may deny an application for counsel, without prejudice, if it is unable to determine that plaintiff's claims is "likely to be of substance." *Allah v. Michael*, 506 F. App'x 49, 52 (2d Cir. 2012) (internal quotation marks and citation omitted). For that very reason, Fleming's request for counsel is denied without prejudice. As for discovery, because no answer had been interposed before the motion to dismiss was filed, Fleming was not entitled to any discovery earlier in this action. Following, the interposition of a responsive pleading by defendants, the litigation can proceed in the ordinary way.

In light of the foregoing, it is hereby

ORDERED that the Order and Report-Recommendation (Dkt. No. 29) is **ADOPTED** in its entirety; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 22) is

DENIED; and it is further

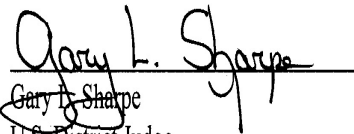
ORDERED that defendants shall file an appropriate responsive pleading within the time allotted under the rules; and it is further

ORDERED that Flemming's request for appointment of counsel and discovery (Dkt. No. 31) is **DENIED** without prejudice; and it is further

ORDERED that the clerk of the court serve a copy of this order upon the parties in accordance with this court's Local Rules.

IT IS SO ORDERED.

March 22, 2016
Albany, New York


Gary L. Sharpe
U.S. District Judge