

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FREDERICK BANKS, et al.,)	
)	2:15cv310
Plaintiffs,)	Electronic Mail
)	
v.)	Judge David Stewart Cercone
)	Magistrate Judge Lisa Pupo Lenihan
NYPD, <i>et al.</i> ,)	
)	
Defendants.)	ECF Nos. 1, 2 & 7

MEMORANDUM ORDER

Plaintiff commenced this civil action on January 27, 2015 by filing with the Clerk for the United States District Court for the Eastern District of Texas, a Motion for Leave to Proceed in Forma Pauperis (ECF No. 2) on Form AO 240 (Rev. 7/10) Application to Proceed in District Court Without Prepaying Fees or Costs. On the same day, Mr. Banks also submitted for filing an Indictment and Petition for a Writ of Mandamus Complaint, docketed as a Motion for Writ of Mandamus, and construed by the Court as “the Complaint” (ECF No. 1). Although Kenneth Posner is also listed as a Plaintiff, he failed to pay the filing fee or motion for leave to proceed in forma pauperis. The case was transferred to the this Court and referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 7), filed on March 9, 2015, recommended that the Motion for Leave to Proceed In Forma Pauperis filed by Frederick Banks (ECF No. 2) be denied. It was also recommended that the Indictment and Petition for a Writ of Mandamus Complaint, docketed as a Motion for Writ of Mandamus and

construed by the Court as the Complaint (ECF No. 1) be dismissed. It was further recommended that the Complaint also listing Kenneth Posner as Plaintiff be dismissed for failure to pay the filing fee and for failure to motion for leave to proceed in forma pauperis. Finally, it was recommended that the clerk mark the case closed. Service of the Report and Recommendation was made via First Class Mail on Frederick Banks at his address of record, P.O. Box 42303, Pittsburgh, PA 15203, and on Kenneth Posner at his address of record, P.O. Box 295, Pittsburgh, PA 15230. Service was also made on the addresses reflected on the Complaint. Plaintiffs were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. No objections have been filed.

Therefore, after a de novo review of the Motion for Leave to Proceed in Forma Pauperis and attachments thereto, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 31ST day of March, 2015,

IT IS HEREBY ORDERED that the Motion for Leave to Proceed In Forma Pauperis filed by Plaintiff Frederick Banks (ECF No. 2) is **DENIED**, and the Complaint (ECF No. 1) is **DISMISSED**. The Clerk of Court is directed to mark this case **CLOSED**.

IT IS FURTHER ORDERED that if Plaintiff Frederick Banks wishes to continue to pursue this civil action, he must file a motion to reopen the case and submit either the required certification statement or the \$400 filing fee. In the event that Mr. Banks decides to proceed with this case by either submitting the required certification statement or paying the \$400 filing

fee, the Court strongly urges him to revise his complaint to take into consideration the infirmities noted in the Magistrate Judge's Report and Recommendation (ECF No. 7).

IT IS FURTHER ORDERED that Kenneth Posner may not join in the lawsuit filed at Case No. 2:15-cv-310 with Frederick Banks, but must file a separate civil action setting forth his claims with sufficient facts to show entitlement to the relief he is requesting.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 7) of Magistrate Judge Lenihan, dated March 9, 2015, is adopted as the Opinion of the Court.



DAVID STEWART CERCONI
United States District Judge

cc: Frederick Banks (address of record)
P.O. Box 42303
Pittsburgh, PA 15203

Frederick Banks (address reflected on Complaint)
P.O. Box 295
Pittsburgh, PA 15230
Via First Class Mail

Kenneth Posner (address of record)
P.O. Box 295
Pittsburgh, PA 15230
Via First Class Mail

Kenneth Posner (address reflected on Complaint)
47 Wayland Drive
Verona, NJ 07044-2330
Via First Class Mail