

United States District Court
Southern District of Texas

ENTERED

April 13, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KOLAN JENKINS,
SPN 01194776,

Plaintiff,

VS.

HAINES LAW, *et al*,

Defendants.

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CIVIL ACTION NO. H-18-687

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pro se Plaintiff Kolan Jenkins is currently confined in the Harris County Jail. Plaintiff has filed a complaint using the form for civil rights complaints under 42 U.S.C. § 1983, alleging that his attorney did not return unearned fees. The Court concludes that this case must be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

Unlike state courts, which have subject matter jurisdiction over a broad assortment of causes and claims, the jurisdiction of federal courts is limited only to cases or controversies that are “authorized by Article III of the [United States] Constitution and the statutes enacted by Congress pursuant thereto.” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citing *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 173-180 (1803)); *Scarlott v. Nissan North Amer., Inc.*, 771 F.3d 883, 887 (5th Cir. 2014) (“Federal courts are courts of limited jurisdiction ‘hav[ing] only the authority endowed by the Constitution and that conferred by Congress.’ ”) (quotation omitted). Because of the limits on federal judicial power, district courts have a duty to evaluate subject matter jurisdiction — even if the parties do not raise this issue — before reaching the merits of a case. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 668 F.3d 281, 286 (5th Cir. 2012)

(“Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims.”) (citations omitted). If a district court determines at any time that it lacks subject matter jurisdiction, it “must dismiss the action.” FED. R. CIV. P. 12(h)(3).

Generally, a federal district court has the authority to hear two types of cases: (1) cases in which a plaintiff alleges a cognizable violation of his rights under the Constitution or federal law; and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state where the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331-32. Assuming that all of Plaintiff’s allegations are true, his case falls into neither category.

In order to state a federal claim under section 1983, a plaintiff must show that a state actor deprived him of a constitutional right. *See Conway v. Hecker*, 623 F. App’x 232, 232 (5th Cir. Nov. 20, 2015) (mem. op.) (citing *Doe v. Rains Cnty. Indep. Sch. Dist.*, 66 F.3d 1402, 1406 (5th Cir. 1995)). For purposes of section 1983, a public defender or private attorney is not a state actor acting under the color of law. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *see also Conway*, 623 F. App’x at 232. Moreover, Plaintiff’s central claim is that the defendants have withheld money that he believes is his based on a contractual issue; this is a state law claim, not a federal constitutional claim for a violation of civil rights. Accordingly, Plaintiff does not state a claim based on a federal question.

In addition, there is no indication that diversity of parties exists here; Plaintiff is located in Houston, Texas and Haines Law Firm and David Haines also have a Houston, Texas address. *See* Docket Entry No. 1 at 2. Because no diversity of parties exists and none of Plaintiff’s claims raise a federal question, this Court lacks subject matter jurisdiction to hear this claim.

Accordingly, the Court **ORDERS** as follows:

1. This case is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.
2. Plaintiff's pending motion to proceed *in forma pauperis* (Docket Entry No. 2) is **DENIED as MOOT**.

The Clerk of Court will provide a copy of this Order to all the parties of record.

SIGNED at Houston, Texas, this 12th day of April, 2018.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE