

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

C. JOHN FANTEL,
Plaintiff,

v.

CASE NO. 8:24-cv-1831-TPB-TGW

HILLSBOROUGH COUNTY
COURTHOUSE; STATE OF FLORIDA,
Defendants.

REPORT AND RECOMMENDATION

The plaintiff filed an affidavit of indigency pursuant to 28 U.S.C. 1915, seeking a waiver of the filing fee for his lawsuit which purportedly alleges Fifth and Fourteenth Amendment violations of the United States Constitution (Doc. 1). The plaintiff has submitted a complaint (Doc. 1) and an affidavit of indigency (Doc. 2). Because the complaint fails to state a cognizable claim, I recommend that the complaint be dismissed without prejudice.

Under 28 U.S.C. 1915(a)(1), the court may authorize the filing of a civil lawsuit without prepayment of fees if the plaintiff submits an affidavit that includes a statement of all assets showing an inability to pay the filing fee and a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigency, the case shall

be dismissed if the action is frivolous or malicious or fails to state a claim upon which relief may be granted. 28 U.S.C. 1915(e)(2)(B)(i), (ii). To state a claim for relief, the complaint must allege facts from which the court may “draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

The Court liberally construes pro se pleadings. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, a pro se pleading “must still comply with procedural rules governing the proper form of pleadings.” Hopkins v. St. Lucie Cnty. Sch. Bd., 399 Fed. Appx. 563, 565 (11th Cir. 2010). Thus, a court will not “rewrite an otherwise deficient pleading in order to sustain an action.” Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1169 (11th Cir. 2014) (citation omitted).

The complaint names the “Hillsborough County Courthouse” as the defendant. That is not a proper party defendant.

Further, the complaint is a vague and conclusory statement that fails to state a claim upon which relief may be granted. For example, “the plaintiff alleges the policy for the only law library which denies the plaintiff access for legal research due to a policy of not allowing personal property, in this instance, a collapsible/ foldable scooter to stay with plaintiff’s person is a denial of access to the courts” (Doc. 1, p. 2).

Moreover, the plaintiff inserts incoherent assertions that further muddle his allegations. For example, he alleges: “Denial of access to the courts is done by the under color of law process which violates Art. 1 §21 with the court fees” (Doc. 1, p. 4). Such assertions underscore the frivolousness of this complaint.

When a complaint is dismissed as deficient, a pro se plaintiff must generally be given one chance to amend his complaint. Silva v. Bieluch, 351 F.3d 1045, 1048-49 (11th Cir. 2003). Consequently, this plaintiff should be given at least one opportunity to allege a viable claim. Therefore, I recommend that the complaint be dismissed without prejudice.

Respectfully submitted,



THOMAS G. WILSON
UNITED STATES MAGISTRATE JUDGE

DATED: December 16, 2024.

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report’s proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. 636(b)(1)(C). Under 28 U.S.C. 636(b)(1), a party’s failure to object to this report’s proposed findings and recommendations waives that party’s right to challenge on appeal the district court’s order adopting this report’s unobjected-to factual findings and legal conclusions.