

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 27 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

GARRETT AVANS, JR.,

Plaintiff,

v.

KIRK D. WILLIAMS and
SHAWN C. WHITAKER,

Defendants.

Civil Action No.

08 1488

MEMORANDUM OPINION

This matter is before the Court on consideration of plaintiff's application to proceed *in forma pauperis* and *pro se* complaint. The Court will grant the application and dismiss the complaint without prejudice for lack of subject matter jurisdiction.

Defendants Williams and Whitaker were, respectively, the named defendant and plaintiff's appointed counsel in a prior lawsuit. *See Avans v. Williams*, Civ. No. 03-2427 (JR) (D.D.C. Sept. 14, 2005) (granting Mr. Whitaker's oral motion for relief from appointment, denying motion for default judgment and dismissing case), *aff'd*, 2006 WL 3298244, at *1 (D.C. Cir. Nov. 8, 2006) (per curiam) ("[T]he district court held that appellant had failed to prove his case, and appellant has not met his burden of showing that the district court's ruling was erroneous."). In the instant action, plaintiff appears to allege that defendants committed legal malpractice by lying to the Court during the prior proceedings. *See* Compl. at 1-2.

Federal district courts have jurisdiction in civil actions arising under the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 1331. In addition, federal district courts

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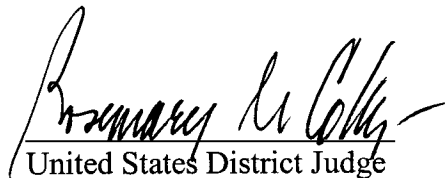
have jurisdiction over civil actions where the matter in controversy exceeds \$75,000, and is between citizens of different states. *See* 28 U.S.C. §1332(a). Plaintiff's complaint states neither a federal claim nor establishes diversity of citizenship.

"For jurisdiction to exist under 28 U.S.C. § 1332, there must be complete diversity between the parties, which is to say that the plaintiff may not be a citizen of the same state as any defendant." *Bush v. Butler*, 521 F. Supp. 2d 63, 71 (D.D.C. 2007) (citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978)). Here, although defendant Whitaker appears to be a citizen of Maryland, both plaintiff and defendant Williams are citizens of the District of Columbia. "When a Court's subject matter jurisdiction is dependent solely on diversity jurisdiction and the Court finds that complete diversity does not exist, the Court must dismiss the suit." *Id.* (citing *Fox v. Bd. of Trustees of the State Univ. of New York*, 42 F.3d 135, 140 (2d Cir. 1994)).

Accordingly, the Court will dismiss the complaint without prejudice for lack of subject matter jurisdiction. An Order consistent with this Memorandum Opinion will be issued separately.

Date:

20 Aug 2008


United States District Judge