

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DARREL F. CRONKHITE,)
)
 Plaintiff)
)
 v.) Civil No. 98-0039-B
)
 TOWN OF NEWPORT, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff has filed a Complaint pursuant to 42 U.S.C. § 1983 together with an Application for Leave to Proceed in Forma Pauperis. Upon review of these materials, the Court concludes that the Application for Leave to Proceed in Forma Pauperis should be denied because Plaintiff has been gainfully employed full-time since January. Further, the Court is satisfied that Plaintiff's Complaint fails to state a cause of action cognizable under section 1983.

Plaintiff names four Defendants in this action, two of which, the Town of Newport and the Newport Police Department, are not "persons" within the meaning of section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding the same for the State Police). As to the individual Defendants, Majeske and Davis, Plaintiff's Complaint appears to allege nothing more than simple negligence which, while perhaps actionable in state court, is not sufficient to invoke section 1983. Section 1983 provides a right of action for civil rights violations, and cannot be used to sue state officials for negligence. *Daniels v. Williams*, 474 U.S. 327 (1986).

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Application to Proceed in Forma Pauperis be DENIED, and his Complaint DISMISSED for his failure to state a claim cognizable under 42 U.S.C. § 1983.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.