

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JOSEPH L. BERNATCHE, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 03-172-P-S  
 )  
 LAW OFFICE OF DANIEL )  
 G. LILLEY, et al., )  
 )  
 Defendants )

***DECISION GRANTING MOTION TO PROCEED IN FORMA PAUPERIS AND  
RECOMMENDING DISMISSAL OF COMPLAINT  
BECAUSE OF LACK OF SUBJECT MATTER JURISDICTION***

Joseph Bernatche has filed an action against The Law Offices of Daniel Lilley, Daniel Lilley, and William Fogel. (Docket No. 1.) Bernatche has filed a motion to proceed in forma pauperis (Docket No. 2) that I now **GRANT**.

Bernatche’s third amended complaint is entitled: “Complaint for Damages Resulting from Legal-Malpractice.”<sup>1</sup> (Docket No. 5.) In Paragraph 4 Bernatche states:

In this legal-malpractice law-suit, the references below the one-hundred twenty-nine counts that follow, are references to the Maine Bar Rules; Rule 3-Code of Professional Responsibility; without any consideration whatsoever to the seemingly innumerable M.R.S.A.[s] which may be invoked. Therefore, the violations of the Maine Bar Rules listed below each count to follow, shall not be preceded by M.B.R. when referencing the one-hundred twenty-nine counts that follow.

As promised, each count of Bernatche’s complaint does indeed pertain to legal malpractice.

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<sup>1</sup> In the title Bernatche also requests a three judge District Court Panel, injunctive relief, and a jury trial.

Section 1331 of title 28 provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

Bernatche’s claims do not arise under federal law but are unquestionably brought solely under Maine laws regulating the legal profession. See, e.g., Custer v. Sweeney, 89 F.3d 1156, 1168 (4th Cir. 1996); see cf. Turner v. Sullivan, 937 F. Supp. 79 (D. Mass. 1996) (reaching similar conclusion vis-à-vis medical malpractice count, in a 42 U.S.C. § 1983 case where the defendants successfully moved to have the medical malpractice count referred to a state medical malpractice tribunal).

Bernatche’s certificate of service indicates that all three defendants were served at Portland, Maine addresses and Bernatche describes himself as a citizen and resident of Portland, Maine. There is no diversity jurisdiction over these parties. 28 U.S.C. § 1332.

Accordingly, I recommend that the Court sua sponte **DISMISS** this complaint because it has no jurisdiction over the claims. See Apple v. Glenn, 183 F.3d 477, 479 (6th Cir. 1999) (“[A] district court may, at any time, sua sponte dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.”); accord Franklin v. Oregon Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981)

#### 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) 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.

July 29, 2003.

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Margaret J. Kravchuk

**STANDARD, CASREF**

U.S. Magistrate Judge

**U.S. District Court  
District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 2:03-cv-00172-GZS  
Internal Use Only**

BERNATCHE v. LILLEY et al  
Assigned to: JUDGE GEORGE Z SINGAL  
Referred to:  
Demand: \$  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 42:1986 Neglect of Duty

Date Filed: 07/07/03  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff**

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**JOSEPH BERNATCHE**

represented by **JOSEPH BERNATCHE**  
PO Box 10771  
Portland ME  
(207) 797-5256  
PRO SE

V.

**Defendant**

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**DANIEL G LILLEY**

**LAW OFFICES OF DANIEL G  
LILLEY LLC**

**WILLIAM A FOGEL**