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U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

FEB 3 1983

AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M  
GEORGE A. RAY, CLERK  
SYRACUSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Plaintiff,

vs.

Civil No. ~~93-CV-177~~  
(FJS)(GJD)

N.Y.S. Attorney General ROBERT ABRAMS,

Defendant.

IN THE MATTER OF A GRAND JURY  
APPLICATION BY GEORGE SASSOWER  
INDIVIDUALLY AND ON BEHALF OF  
THE JURY FOR THE NORTHERN DISTRICT  
OF NEW YORK,

Petitioner,

Civil No. 93-CV-178  
(FJS)(GJD)

FOR A GRAND JURY PRESENTATION  
CONCERNING THE CRIMINAL ACTIVITIES  
OF ROBERT ABRAMS, ATTORNEY GENERAL  
OF THE STATE OF NEW YORK, AND FRANCIS  
T. MURPHY, PRESIDING JUSTICE OF THE  
APPELLATE DIVISION, STATE OF NEW YORK,  
FIRST JUDICIAL DEPARTMENT.

APPEARANCE:

OF COUNSEL:

GEORGE SASSOWER,  
Plaintiff, Pro Se  
16 Lake Street, Apt. 2C  
White Plains, New York 10603-3852

FREDERICK J. SCULLIN, District Judge

ORDER

Presently before this court are the above-captioned  
plaintiff's applications to proceed in forma pauperis in these

civil actions. For the reasons set out below, plaintiff is denied leave to proceed in forma pauperis and the actions dismissed pursuant to 28 U.S.C. § 1915(d) as frivolous and malicious.

In the first lengthy and nearly incomprehensible complaint, plaintiff alleges that the defendant is unlawfully representing state employees who are defendants in civil actions in their individual capacities. Plaintiff contends that such representation is in violation of the Eleventh Amendment to the United States Constitution and further complains that the defendant unlawfully involved himself in the "PUCCINI" litigation and other legal matters.

The second matter referenced above appears to be an attempt to force the U.S. Attorney of the Northern District to present to the Grand Jury, pursuant to 18 U.S.C. § 3332(a), evidence of a criminal conspiracy by the above-named principals in connection with the "PUCCINI" litigation. The court notes that the plaintiff/petitioner has demanded in this regard that the undersigned, in my former capacity as U.S. Attorney, recuse myself from presenting this matter to the Grand Jury because of a "general bias". Notwithstanding plaintiff's request, and in light of the finding of this court that the complaint and petition are frivolous, the request for recusal in any capacity is denied.

Conclusory allegations of conspiracy and corruption abound in this complaint and petition, and absent an awareness of the litigious history of this plaintiff, the court would be satisfied to merely dismiss the complaint as an overzealous litigant misconstruing the law. Plaintiff however, is a disbarred attorney who has been jailed for contempt and barred from filing

any complaints relating to the "PUCCINI" litigation. See Sassower v. Sheriff of Westchester County, 824 F.2d 184, 186 (2d Cir. 1987). The attempt by plaintiff to relitigate even collateral issues to the "PUCCINI" matters is, in this court's opinion, sufficient basis to find that plaintiff is yet again attempting to file frivolous and malicious litigation.

The method to determine whether a pro se plaintiff should be permitted to proceed in forma pauperis requires a two step process to be followed by the district court. First, the court must determine whether the plaintiff qualifies by economic status and, second, whether the cause of action stated in the complaint is not frivolous, malicious or without merit. Martin-Trigona v. Stewart, 691 F.2d 856 (8th Cir. 1982). The court has determined that plaintiff's financial status qualifies him to file or "commence" this action in forma pauperis. 28 U.S.C § 1915(a).

Although plaintiff may be permitted to commence the action in forma pauperis, the court may "dismiss the proceeding under 28 U.S.C. § 1915(d) if the court thereafter determines that the application of poverty is untrue or the action is frivolous or malicious." Brown v. Schneckloth, 421 F.2d 1402 (9th Cir.), cert. denied, 400 U.S. 847 (1970).

In determining whether plaintiff's action is frivolous or malicious the court must look to see whether plaintiff can make a rational argument on the law or facts to support the claim. Neitzke v. Williams, 490 U.S. 319 (1989). Although the court has the duty to show liberality towards pro se litigants, Haines v. Kerner, 404 U.S. 519 (1972); Nance v. Kelly, 912 F.2d 605 (2d Cir. 1990), and extreme caution should be used in considering an in

forma pauperis application, Anderson v. Coughlin, 700 F.2d 37 (2d Cir. 1983), there is a responsibility on the court to determine that a claim is not frivolous or malicious before permitting a plaintiff to proceed with an action in forma pauperis. Ultimately, dismissal of frivolous actions pursuant to 28 U.S.C. § 1915(d) is appropriate to prevent abuses of the process of the court, Harkins v. Eldredge, 505 F.2d 802 (8th Cir. 1974), as well as to discourage the waste of judicial resources. Neitzke, 490 U.S. at 327.

Plaintiff's complaint and petition arises from his and his associate's contact with the Attorney General in a number of forums, none of which appear to have occurred in the Northern District. It appears that plaintiff seeks to file these actions here to avoid the likelihood of sanctions in the Southern or Eastern Districts of New York. See, e.g., Raffe v. Doe, 619 F. Supp. 891 (S.D.N.Y. 1985); Raffe v. Citibank, N.A., Civil Docket No. 84-CIV-305 (E.D.N.Y. 1985); In re George Sassower, 700 F. Supp. 100 (E.D.N.Y. 1988). Considering both plaintiff's litigious history and warnings concerning "PUCCINI" related litigation and the allegations here presented, it is the opinion of this court that these actions are frivolous, malicious, and without any arguable basis in law.

Claims like this now before the court, which have no arguable basis in law, may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319 (1989). In sum, I find the complaint herein frivolous. To allow further processing of these claims would be a waste, not only of public funds, but of scarce judicial resources.

Accordingly, it is hereby  
ORDERED, that the plaintiff is granted leave to file in  
forma pauperis, and it is further


ORDERED, that the plaintiff is denied leave to proceed  
in forma pauperis and the above-captioned complaint and petition  
are dismissed pursuant to 28 U.S.C. § 1915(d), and it is further

ORDERED, that the Clerk serve a copy of this Order on  
the plaintiff by regular mail.

I further certify that any appeal of these matters would  
not be in good faith pursuant to 28 U.S.C. § 1915(a).

IT IS SO ORDERED.

DATED: February 3<sup>rd</sup>, 1993  
Syracuse, New York

  
FREDERICK J. SCULLIN  
U.S. District Judge