

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Mario Macellari v. Scott Sherwood

Macellari · No. Civil No. 25-5780 · Decided February 11, 2026

SUMMARY

The District of New Jersey granted Mario Macellari’s application to proceed in forma pauperis after finding that he could not pay the filing fee. The court dismissed his complaint without prejudice for failing to establish subject matter jurisdiction and permitted him to reopen the case by filing an amended complaint within thirty days.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Renée Marie Bumb
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	February 11, 2026
DOCKET	Civil No. 25-5780
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se plaintiff applied to proceed in forma pauperis and filed a complaint against the Atlantic County Chief Public Defender. The court granted in forma pauperis status, screened the complaint under 28 U.S.C. § 1915(e)(2)(B), and dismissed it without prejudice for lack of subject matter jurisdiction.
STANDARD OF REVIEW	The court reviewed the IFP application for indigence and screened the complaint sua sponte under 28 U.S.C. § 1915(e)(2)(B) to determine whether it stated a claim and was not frivolous or malicious.
PRECEDENTIAL VALUE	nonprecedential district court memorandum order

TOPICS

- subject matter jurisdiction
- pleadings
- civil procedure

PRACTICE AREAS

- civil procedure
- federal jurisdiction
- in forma pauperis proceedings
- pro se litigation
- prisoner and civil rights litigation

QUESTIONS PRESENTED

1. Whether Macellari established that he was unable to pay the federal filing fees and therefore qualified to proceed in forma pauperis.
2. Whether the complaint, when screened under 28 U.S.C. § 1915(e)(2)(B), adequately established subject matter jurisdiction through diversity or federal-question jurisdiction.
3. Whether the complaint should be dismissed without prejudice for lack of subject matter jurisdiction.

HOLDINGS

1. The plaintiff qualified to proceed in forma pauperis because the financial materials showed that he could not pay the court's filing fees.
2. The complaint did not establish subject matter jurisdiction because its allegations were insufficient to show either diversity-of-citizenship jurisdiction or federal-question jurisdiction.
3. The complaint was dismissed without prejudice for lack of subject matter jurisdiction.

KEY QUOTATIONS

“Even under the liberal reading that this Court gives to Macellari’s Complaint, see Erickson v. Pardus, 551 U.S. 89, 94 (2007), the Court is unable to determine if it has subject matter jurisdiction over this lawsuit—diversity of citizenship or federal question jurisdiction.”

“Accordingly, this Court dismisses Macellari’s Complaint without prejudice for lack of jurisdiction.”

FACTUAL BACKGROUND

Macellari was involved in an ongoing criminal prosecution and alleged that Scott Sherwood, the Atlantic County Chief Public Defender representing him, continued to represent him despite Macellari's asserted desire to proceed without counsel. Macellari alleged that Sherwood obstructed or destroyed his defense strategy and colluded with Judge Donna Taylor to violate his right to defend himself. The complaint did not provide sufficient factual allegations establishing diversity citizenship or federal-question jurisdiction.

PROCEDURAL HISTORY

Macellari sought leave to proceed in forma pauperis so he could sue Scott Sherwood, who appeared to be representing him in an ongoing criminal prosecution. After reviewing the poverty affidavit, account certification, and account record, the court found that Macellari could not pay the filing fees and granted IFP status. The court then screened the complaint, found that it did not adequately establish diversity or federal-question jurisdiction, dismissed the complaint without prejudice, allowed reopening if an amended complaint was filed within thirty days, and directed that Sherwood not be served before screening of any amended complaint.

DISPOSITION

dismissed

CASES CITED

- *Douris v. Newtown Borough, Inc.*, 207 F. App'x 242, 243 (3d Cir. 2006)
- *Hurst v. Shalk*, 659 F. App'x 133, 134 (3d Cir. 2016)
- *Walker v. People Express Airlines, Inc.*, 886 F.2d 598, 601 (3d Cir. 1989)
- *Freeman v. Edens*, 2007 WL 2406789, at *1 (D.N.J. Aug. 17, 2007)
- *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE
 MARIO MACELLARI, Plaintiff, Civil No. 25-5780 v. MEMORANDUM ORDER SCOTT
 SHERWOOD, Defendant. RENÉE MARIE BUMB, Chief United States District Judge Pro se
 Plaintiff Mario Macellari asks this Court to allow him to proceed in forma pauperis (IFP) so he can
 sue Defendant Scott Sherwood, Atlantic County's Chief Public Defender, who appears to be
 representing him in an ongoing criminal prosecution.

28 U.S.C. § 1915 allows federal courts to waive the prepayment of court fees if the litigant "is
 unable to pay such fees." 28 U.S.C. § 1915(a). Once a court grants an IFP application, § 1915
 requires the Court to screen the litigant's complaint to ensure, among other things, it states a claim
 and that the lawsuit is not frivolous or malicious. *Id.* § 1915(e)(2)(B).

Third Circuit courts only grant leave to proceed IFP "based on a showing of indigence." *Douris v.*
Newtown Borough, Inc., 207 F. App'x 242, 243 (3d Cir. 2006). While IFP status is not reserved
 solely for the "absolutely destitute[.]" the litigant "must establish that he is unable to pay the costs
 of his suit." *Hurst v. Shalk*, 659 F. App'x 133, 134 (3d Cir. 2016) (quoting *Walker v. People*
Express Airlines, Inc., 886 F.2d 598, 601 (3d Cir.

1989)). The litigant seeking IFP status shoulders the burden "to provide the [Court] with the
 financial information it need[s] to make a determination as to whether he qualifie[s] for [IFP]
 status." *Freeman v. Edens*, 2007 WL 2406789, at *1 (D.N.J. Aug. 17, 2007) (first, second, and
 third alterations in original) (citation and internal quotation marks omitted).

Here, after considering Macellari's Affidavit of Poverty and Account Certification, and the
 accompanying Offender Management System account record, the Court finds that he cannot pay
 the Court's filing fees. [Docket No. 1-1.]

Thus, the Court grants his IFP application. Still, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii), the
 Court screens Macellari's Complaint to ensure he states a claim for relief and that his lawsuit is
 not "frivolous or malicious." Macellari's pro se status does not relieve him of his obligation to
 allege enough facts in the Complaint to support these claims.

Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013). While unclear, Macellari appears to raise claims against Sherwood, who is currently representing him in an ongoing criminal prosecution. [Docket No. 1 (“Compl.”) at 4.] Macellari appears unsatisfied with Sherwood’s representation, claiming he advised Sherwood that he does not want to be represented by counsel.

[Id.] Despite these instructions, Macellari claims Sherwood continues to represent him and “obstruct[] and destroy[his] defen[s]e strategy.” [Id.] Macellari also claims that Sherwood and Judge Donna Taylor colluded to violate his “right to defend [himself].” [Compl. at 6.] Even under the liberal reading that this Court gives to Macellari’s Complaint, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), the Court is unable to determine if it has subject matter jurisdiction over this lawsuit—diversity of citizenship or federal question jurisdiction.

28 U.S.C. §§ 1331, 1332. Without more factual allegations, Macellari’s alleged dissatisfaction with Sherwood’s legal representation is insufficient to establish subject matter jurisdiction. Accordingly, this Court dismisses Macellari’s Complaint without prejudice for lack of jurisdiction.

For the above reasons, and for other good cause shown, IT IS on this 11th day of February 2026, hereby: ORDERED that the Court GRANTS Plaintiff’s IFP application; and it is further ORDERED that Plaintiff’s Complaint is DISMISSED WITHOUT PREJUDICE [Docket No. 1]; and it is further ORDERED that Plaintiff may have the above-entitled case reopened, if, within thirty days of the date of the entry of this Memorandum Order, Plaintiff files an amended Complaint; and it is further ORDERED that Defendant shall not be served before the Court’s sua sponte screen of an amended Complaint; and it is further ORDERED that the Clerk of the Court shall serve a copy of this Memorandum Order on Plaintiff to his address of record by regular U.S. mail; and it is finally ORDERED that the Clerk of the Court shall CLOSE this matter. s/Renée Marie Bumb RENÉE MARIE BUMB Chief United States District Judge