

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRENDA C. ARMSTRONG,

Petitioner,

v.

JOHN HARKNESS, JR.,

Respondent.

ORDER

02-C-687-C

This is a proposed civil action for monetary relief. Petitioner Brenda C. Armstrong requests leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit. In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed in forma pauperis if there is an arguable basis for a claim in fact or law. 28 U.S.C. § 1915(e)(2).

The body of petitioner's complaint alleges:

Named defendant – negligent in performing duties regarding disciplinary action to a one Brad King attorney who failed to prosecute liable parties of aggravated stalking aggravated perjury attempted murder on file Lake County Sheriff's Office – Eustis

Florida – Leesburg Police Florida toward Plaintiff. Dates September 18 –1998 To April 22, 2002.

Petitioner’s request for relief demands : “Prosecution and Removal of a one Brad King to be done by Florida Bar grievance committee – formal adversarial proceedings leading to disposition by the Supreme Court of Florida to be initiated by John Harkness, Jr. Executive Director Fl. Bar.”

Although petitioner’s complaint is far from clear, it appears that she believes that respondent, an officer of the Florida Bar Association, was negligent in failing to discipline Brad King for failing to prosecute an alleged crime. However, neither petitioner nor this court, nor the Florida Bar can compel a state prosecutor to bring criminal charges against an individual. The decision to initiate a criminal prosecution is within the exclusive province of the prosecutor. Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). If a prosecutor cannot be held liable for deciding not to prosecute, the Florida Bar cannot be held liable for declining to discipline a prosecutor for exercising his or her discretion. Because petitioner’s claim has no arguable basis in law, I will dismiss it as legally frivolous.

ORDER

IT IS ORDERED that petitioner Brenda Armstead’s request for leave to proceed in forma pauperis is DENIED as legally frivolous and this case is DISMISSED.

Entered this 30th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge