

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 08-cv-00620-MSK-KMT

DAVID BAXTER (Richie A. Hill),

Plaintiff,

v.

LT. SAMPLES (U.S.P. Marion),
LT. HUGHES,
LT. LOCKRIDGE,
LT. MANLY (ADX),
S/OFFICER HUMPPRIES (ADX),
JEFF JOHNSON (ADX), and
K. KING, S/Officer (ADX),

Defendants.

**SECOND ORDER DIRECTING PLAINTIFF TO MAKE MONTHLY
FILING FEE PAYMENT OR TO SHOW CAUSE AND WITHDRAWAL OF
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

On April 18, 2008, the plaintiff was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. *Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915* [Doc. No. 6]. Section 1915(b)(2), 28 U.S.C., requires that a prisoner “shall make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account,” provided the prisoner’s account exceeds \$10.00. This provision requires the prisoner to make the payment at the time his account is credited, before the prisoner engages in other, discretionary spending.

Harris v. Colorado Dept. of Corrections, No. 00-N-1066, 2000 WL 33193816, at *1 (D. Colo. December 19, 2000).

In the Order granting Plaintiff leave to proceed *in forma pauperis*, Plaintiff was instructed to either make the required monthly payments or to show cause **each month** why he has no assets and no means by which to make the monthly payment.

The only statement/payment received by Plaintiff was on April 17, 2008, when he applied for *in forma pauperis* status. On September 18, 2008, this court issued an order directing the plaintiff to, on or before September 30, 2008, make the required monthly payments or show cause why he has no assets and no means by which to make the monthly payments for the months of May 2008 through September 2008. [Doc. No. 34.] Plaintiff failed to make either the monthly payments or to respond to the show cause order. Since that time, Plaintiff has failed to make the required monthly payment or show cause why he has no assets and no means by which to make the monthly payments for the months of May 2008 through December 2008.

It is not acceptable for Plaintiff to meet his monthly obligations only when specifically called upon by the court through an order to pay or show cause. Such a procedure unreasonably burdens the court. Consequently, hereafter I will require Plaintiff, by the **15th day of each** month and without any further notice from or order of the court, either to make the required monthly payment for each preceding month or to file a certified copy of his inmate trust fund account statement for the preceding month demonstrating that he has no assets and no means by which to make the monthly payment. If Plaintiff fails hereafter to comply with this requirement in any month prior to the date on which the filing fee is paid in full, I will recommend that the

case be dismissed for failure to comply with this Order and with the Order allowing Plaintiff to proceed *in forma pauperis*.

IT IS ORDERED that on or before **February 16, 2009**, Plaintiff shall make the required monthly payments or show cause why he has no assets and no means by which to make the monthly payments for the months of **May 2008 through February 2009**.

IT IS FURTHER ORDERED that by the **15th day** of **each** month hereafter Plaintiff shall either make the required monthly payment for each month or file a certified copy of his inmate trust fund account statement for the month demonstrating that he is not required pursuant to 28 U.S.C. § 1915(b)(2) to make a monthly payment. Furthermore, if payment is made for the preceding month, in order to verify that the appropriate amount is being paid, the Plaintiff must file a certified copy of his trust fund account statement for that month. The civil action number should be noted on all payments as well as on any trust fund statements that are filed with the court.

IT IS FURTHER ORDERED that if Plaintiff fails to comply with this order, the complaint and this civil action may be dismissed without further notice.

IT IS FURTHER ORDERED that the Recommendation of United States Magistrate Judge filed on October 2, 2008, is WITHDRAWN.

Dated this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kathleen M. Tafoya". The signature is written in a cursive style with a large initial 'K' and 'T'.

Kathleen M. Tafoya
United States Magistrate Judge