

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 27 2009

Civil Action No. 08-cv-02165-BNB

JEFFERY SCOTT DURHAM,

Plaintiff,

v.

HARLEY G. LAPPIN,  
HARRELL WATTS,  
MICHAEL K. NALLEY,  
J. JONES,  
ROD BAUER,  
B. GREENWOOD,  
S. NAFZIGER,  
NORA GLADBACH,  
A. OSAGIE, and  
Y. FETTERHOFF,

Defendants.

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff Jeffery Scott Durham is a prisoner in the custody of the United States Bureau of Prisons at a federal prison in Kentucky. Mr. Durham initiated this action by filing *pro se* a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. In an order filed on October 7, 2008, Magistrate Judge Boyd N. Boland directed the clerk of the court to commence this action and directed Mr. Durham to cure certain deficiencies if he wishes to pursue his claims in this action. More specifically, Magistrate Judge Boland ordered Mr. Durham to file his complaint and motion seeking leave to proceed *in forma pauperis* on the Court's approved forms, to submit a certified copy of his inmate trust fund account

statement in support of the motion for leave to proceed *in forma pauperis*, and to include in the text of the complaint the same Defendants named in the caption of the complaint. On November 7, 2008, Magistrate Judge Boland entered a minute order granting Mr. Durham's motion for an extension of time to cure the deficiencies.

On November 24, 2008, Mr. Durham filed on the Court's current form a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and he submitted a certified copy of his inmate trust fund account statement in support of that motion. In an order filed on January 15, 2009, Magistrate Judge Boland granted Mr. Durham leave to proceed *in forma pauperis* in this action.

Also on November 24, 2008, Mr. Durham filed objections to the portion of Magistrate Judge Boland's October 7 order that directed him to file an amended pleading on the Court's Prisoner Complaint form. Mr. Durham's objections focused on the amount of space he believes is necessary to present his claims properly. On December 11, 2008, the Court entered an order overruling Mr. Durham's objections and directing him to file his complaint on the Court-approved Prisoner Complaint form. The Court specifically determined that Mr. Durham's claims adequately could be presented using the Court-approved Prisoner Complaint form.

On December 31, 2008, Mr. Durham filed on the proper form a Prisoner Complaint that is largely blank and a document titled "Plaintiff Hereby Cures the Remaining Deficiency and Shows Good Cause as to Why the Court-Approved Complaint Forms are Inadequate for Plaintiff to File a Legally Effective Complaint." Mr. Durham describes the Prisoner Complaint filed on December 31 as a continuation of, or supplement to, his original complaint filed on October 7.

On January 15, 2009, Magistrate Judge Boland entered an order in this action in which he determined that Mr. Durham's amended complaint filed on December 31 did not comply with the prior orders entered in this action. Magistrate Judge Boland rejected Mr. Durham's arguments for why he should not be required to use the Court-approved form because the Court already had determined those arguments lack merit. Magistrate Judge Boland also advised Mr. Durham that a cursory review of the original complaint filed in this action revealed that the original complaint did not comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and could be significantly shorter. As a result, Magistrate Judge Boland determined that Mr. Durham would not be prejudiced by enforcement of the Court's local rule requiring *pro se* prisoners to use the Court-approved forms. Despite his failure to comply with the prior orders entered in this action, Magistrate Judge Boland gave Mr. Durham one final opportunity to file an amended complaint on the proper Court-approved form within thirty days. Mr. Durham was advised that this action would be dismissed without further notice if he failed to file an amended pleading on the Court-approved form within the time allowed.

On February 12, 2009, Mr. Durham filed a document titled "Plaintiff Hereby Files the Following Objections and Shows Good Cause as to Why the Court-Approved Complaint Forms are Inadequate for Plaintiff to File a Legally Effective Complaint." Mr. Durham has not filed an amended complaint on the Court-approved form within the time allowed. The Court previously has addressed Mr. Durham's objections to use of the Court-approved Prisoner Complaint form and finds that the objections lack merit. As Mr. Durham repeatedly has been advised, the Court's local rules require *pro se*

prisoners to "use the forms established by this court to file an action."

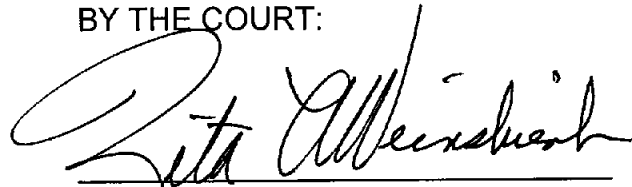
D.C.COLO.LCivR 8.2A. Therefore, the action will be dismissed without prejudice for failure to file an amended pleading on the Court-approved form as directed.

Accordingly, it is

ORDERED that the complaint, the amended complaint, and the action are dismissed without prejudice for failure to file an amended pleading on the Court-approved form as directed.

DATED at Denver, Colorado, this 27 day of Feb., 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 08-cv-02165-BNB

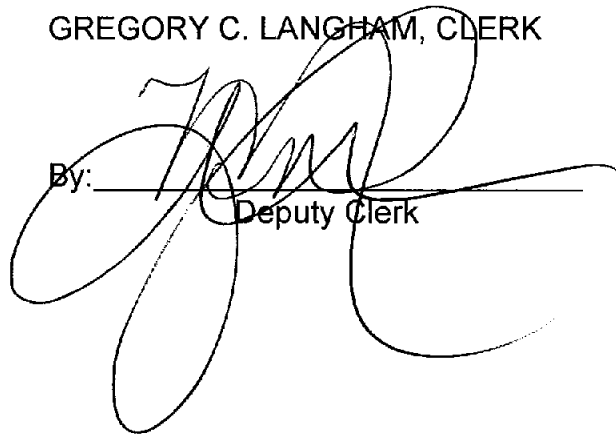
Jeffrey Scott Durham  
Prisoner No. 32060-083  
US Penitentiary - McCreary  
PO Box 3000  
Pine Knot, KY 42635-3000

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 2/27/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. The text 'Deputy Clerk' is printed below the line.