

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01192-BNB

AARON COLEMAN,

Applicant,

v.

BRIGHAM SLOAN, Warden/Trustee,
ARISTEDES ZAVARAS,
BRIAN COLLINS, and
BENT COUNTY CORRECTIONAL FACILITY,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 02 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTIONS

Applicant initiated this action by filing *pro se* a document titled "Motion Rule 34 Requesting of Documents" in which he sought a court order directing a state court to provide certain records he allegedly needed to prepare and file an application for a writ of habeas corpus. In an order filed on May 26, 2009, Magistrate Judge Boyd N. Boland entered an order directing Applicant to cure certain deficiencies if he wishes to pursue his claims. On June 25, 2009, Applicant filed a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. Therefore, the "Motion Rule 34 Requesting of Documents" will be denied as moot. For the reasons stated below, the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action also will be denied.

Section 1915(a)(1) allows a litigant to commence a lawsuit without prepayment of fees or security therefor. However, “[t]here is no absolute right to proceed in court without paying a filing fee in civil matters.” *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988) (per curiam); **see also** 28 U.S.C. § 1914(a). Proceeding *in forma pauperis* pursuant to § 1915, *i.e.* without paying a filing fee under § 1914, is a privilege extended to individuals unable to pay such a fee. **See Holmes**, 852 F.2d at 153.

According to the account statement attached to the *in forma pauperis* motion filed on June 25, the available balance in Applicant’s prison account as of June 19, 2009, is \$510.23. Therefore, the Court finds that Applicant has sufficient assets to pay the \$5.00 filing fee and does not qualify to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. He will be directed to pay the \$5.00 filing fee required pursuant to 28 U.S.C. § 1914 if he wishes to pursue his claims in this action. Accordingly, it is

ORDERED that the “Motion Rule 34 Requesting of Documents” filed on May 26, 2009, is denied as moot. It is

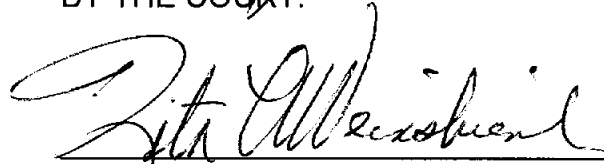
FURTHER ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action filed on June 25, 2009, is denied. It is

FURTHER ORDERED that Applicant pay the full \$5.00 filing fee **within thirty (30) days from the date of this order** if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that if Applicant fails to pay the full \$5.00 filing fee within the time allowed, the habeas corpus application will be denied and the action will be dismissed without prejudice and without further notice.

DATED at Denver, Colorado, this 1 day of July, 2009.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Zita L. Weinsienk", written over a horizontal line.

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. 09-cv-01192-BNB

Aaron Coleman
Prisoner No. 84638
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/2/09

GREGORY C. LANGHAM, CLERK

By. 

Deputy Clerk