

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 10-cv-01970-CMA-BNB

CHARLES RAMOS, JUNIOR,

Plaintiff,

v.

WARDEN KEVIN MILYARD, CDOC;  
CO NAIL, CDOC;  
CO HARDY, CDOC;  
CO HIGGINS, CDOC;  
LIEUTENANT ZWORN, CDOC; and  
DENNY OWENS, Hearings Officer, CDOC,

Defendants.

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**ORDER DENYING MOTION AND ORDER TO SHOW CAUSE**

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This matter arises on the plaintiff's **Motion to Defer Payment of Fees for the Month of February, 2011** [Doc. #48, filed 04/15/2011] (the "Motion"). The Motion is DENIED AS MOOT.

In the order granting the plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 [Doc. #2], the plaintiff was directed to "make monthly payments of twenty percent (20%) of the preceding month's income credited to his trust fund account or show cause each month . . . why he has no assets and no means by which to make the monthly payment." The plaintiff was instructed that "[i]n order to show cause, the plaintiff must file a current certified copy of his trust fund account statement."

The plaintiff seeks a "deferral of payment of filing fees for the month of February, 2011 due to his inability to pay as is shown in th[e] certified copy of his account balance for that

month.” The plaintiff attaches to the Motion a copy of his trust fund account statement for the months of September, October, November, and December 2010, and January, February, and March 2011. His trust fund account statement shows that he did not have the means to make a payment for the month of February. Therefore, the Motion is DENIED AS MOOT.

In reviewing the record, I note that the plaintiff has repeatedly been ordered to either submit his filing fee payments or show cause each month why he cannot [Doc. 2, 5, 17, and 21]. The plaintiff has also been cautioned repeatedly that failure to make a monthly payment or show cause each month why he cannot could result in the dismissal of the action [Docs. #2, #5, and #21].

On November 19, 2010, the plaintiff was unequivocally ordered that on or before December 10, 2010, he must either pay the appropriate fee or show cause why could not. He was further cautioned that failure to do so would result in dismissal of the case:

On September 16, 2010, Plaintiff was granted leave to proceed pursuant to 28 U.S.C. § 1915, and was directed to pay the appropriate monthly payments or **to show cause** why he had no assets and no means by which to pay the designated monthly payments. In order to show cause, Plaintiff must file, **for each month** he is unable to pay a monthly payment, a current **certified copy** of his trust fund account statement. Plaintiff continues to file letters and account statements that are **not certified**.

Plaintiff fails to understand that he either must pay the appropriate monthly payment or show cause as directed in the September 16 order. Simply because Plaintiff does not have enough funds in his trust fund account does not mean he does not need to show cause as directed on a monthly basis. Plaintiff’s request that the Court waive the requirement that he either make monthly payments or show cause why he is unable to do so is **DENIED**.

Plaintiff shall have **twenty-one (21) days from the date of this minute order** either to make a monthly filing fee payment or to file a copy of his trust fund account statement that is **certified** by

an appropriate official of Plaintiff's penal institution. Failure to do so within the time allowed will result in the dismissal of the instant action.

*Minute Order dated November 19, 2010* [Doc. #21] (emphasis in original).

The plaintiff did not make a payment, nor did he show cause on or before December 10, 2010. To the contrary, with the exception of one \$10.00 payment on April 7, 2011 [Doc. #47], the plaintiff has not made a monthly filing fee payment or shown cause *each month* why he cannot not pay. Rather, he waited until April 15, 2011, to file the instant Motion. In addition, he has not made a payment or shown cause for the month of May 2011.

It is not acceptable for plaintiff to meet his monthly obligations only at his convenience or only when specifically called upon by the court. Such a procedure unreasonably burdens the court. Accordingly,

IT IS ORDERED that on or before **July 1, 2011**, the plaintiff shall show cause in writing why this case should not be dismissed for failure to comply with the orders of this court to either make his monthly filing fee payments or show cause *each month* why he cannot [Doc. 2, 5, 17, and 21]. D.C.COLO.LCivR 41.1. Failure to show cause on or before July 1, 2011, will result in my recommendation that this case be dismissed.

IT IS FURTHER ORDERED that the plaintiff's Motion to Defer Payment of Fees for the Month of February, 2011 [Doc. #48] is DENIED AS MOOT.

Dated June 7, 2011.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge