

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02417-BNB

DEAN GATES, #118740,

Plaintiff,

v.

DOUG RODRIGUEZ,
TIM DOUGLAS,
MARSHALL GRIFFITH,
CHERYL SMITH,
COLORADO DEPARTMENT OF CORRECTIONS,
MENTAL HEALTH DEPARTMENT,
KATHY WASCO,
ROBBIE QUICK,
SHARON PHILLIPS,
DR. WORMER,
SGT. SINGLETON, and
MEDICAL DEPARTMENT, Fort Lyons,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 05 2011

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Dean Gates, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Fort Lyon Correctional Facility. Mr. Gates, acting *pro se*, initiated this action by filing a Prisoner Complaint. Upon review of the Prisoner Complaint, Magistrate Judge Boyd N. Boland entered an order on November 19, 2010, instructing Mr. Gates that he had failed to assert personal participation by named defendants and ordering him to file an Amended Prisoner Complaint. Subsequently, on November 24, 2010, Mr. Gates, with the assistance of another inmate, filed a Letter seeking appointment of counsel and an extension of time

to file the Amended Complaint. In the Letter, Mr. Gates indicates that he is legally blind. Mr. Gates, however, does not state that he is not able to file an Amended Complaint within the time allowed because he is legally blind, arguing instead that he needs additional time to obtain the names of staff members. The Court also notes that Mr. Gates has attached a page to the November 24 Letter that provides a description of special services he is entitled to because he has been determined to be legally blind. The services include 16 point font printed materials and use of special resources at the general library where he is housed, which includes the use of a low vision reader.

Magistrate Judge Boland denied Mr. Gates' request for appointment of counsel but granted him additional time to file the Amended Complaint. Mr. Gates now has failed to communicate with the Court and has failed to file a proper amended complaint within the time allowed.

Upon review of the Complaint, the Court finds that Magistrate Judge Boland correctly instructed Mr. Gates to amend and file a complaint that complies with ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007). The action will be dismissed because Mr. Gates has failed to amend and comply with the November 19 Order within the time allowed. Nonetheless, because the action will be dismissed without prejudice, Mr. Gates may proceed with his claims in a new action if he desires. Accordingly, it is

ORDERED that the Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to file an Amended Complaint and for failure to prosecute.

DATED at Denver, Colorado, this 4th day of January,
2011. BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


CERTIFICATE OF MAILING

Civil Action No. 10-cv-02417-BNB

Dean Gates
Prisoner No. 118740
Fort Lyon Corr. Facility
P.O. Box 1000
Fort Lyon, CO 81038

I hereby certify that I have mailed a copy of the **ORDER and JUDGMENT** to the above-named individuals on January 5, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk