

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 10-cv-02862-PAB-KLM

DEAN CARBAJAL,

Plaintiff,

v.

GILBERTO LUCIO, in his individual capacity,  
JAMES DIXON, in his individual capacity,  
MICHAEL O'NEILL, in his individual capacity, and  
JEFFREY WATTS, Investigator for the Second Judicial District, in his individual capacity,

Defendants.

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**ORDER**

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This matter is before the Court on plaintiff's Motion for an Order Directing the Clerk of Court to Stamp the Attached Subpoenas and the Marshals to Effectuate Service [Docket No. 869] and the supplement to the motion [Docket No. 891].

In plaintiff's motion, he states that he is requesting relief under 28 U.S.C. § 1915. Docket No. 869 at 1-2. However, contrary to the Court's assumption at the trial preparation conference, plaintiff is not proceeding *in forma pauperis* in this case. See Docket No. 1. While plaintiff at one time requested leave to proceed on appeal under 28 U.S.C. § 1915, Docket No. 473, that request was denied. Docket No. 476. At no other time did plaintiff move to proceed *in forma pauperis*.

Because plaintiff is not proceeding *in forma pauperis*, the Court does not have the authority to waive payment for fees and mileage upon service of a subpoena. See 28 U.S.C. § 1825(c) (authorizing service of a subpoena without prepayment of fees and

mileage if the subpoena is issued on behalf of a party authorized to proceed *in forma pauperis* and the payment of such fees and mileage is to be made by the United States Marshal). Even if plaintiff were proceeding *in forma pauperis*, the Court would not be authorized to waive payment of witness fees. See *Hooper v. Tulsa Cty. Sheriff Dep't*, 1997 WL 295424 at \*2 (10th Cir. Jun. 4, 1997) (unpublished) ("§ 1915(a)'s waiver of prepayment of 'fees or costs' does not authorize the federal courts to waive or order payment of witness fees for a civil litigant proceeding *in forma pauperis*."). Because Mr. Carbajal "has not tendered the required witness fees and mileage for the persons to be subpoenaed, service of the subpoenas he has tendered would be futile." *Davis v. Andujar*, No. 08-cv-00245-MSK-KMT, 2009 WL 4908180, at \*2 (D. Colo. Dec. 17, 2009).

For the foregoing reasons, it is

**ORDERED** that the Motion for an Order Directing the Clerk of Court to Stamp the Attached Subpoenas and the Marshals to Effectuate Service [Docket No. 869] is denied without prejudice. The Court will reconsider the issue upon Mr. Carbajal's tender of witness fees and mileage.

DATED December 19, 2016.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge