

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00048-MSK-KLM

DALE P. ARMELIN,

Plaintiff,

v.

PATRICK R. DONAHUE, Postmaster General, United States Postal Service,

Defendant.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion Requesting Re-consideration of Order Denying the Reopening of Case 1:11-cv-00048-MSK-KLM** [Docket No. 58; Filed March 23, 2012] (the "Motion"). On September 2, 2011, Plaintiff filed a motion [#46] requesting a six-month stay of all proceedings in this matter due to health issues. The Court granted that motion on September 12, 2011, and stayed the case through March 10, 2012. *See Minute Order* [#53]. The Court also ordered Plaintiff to submit a status report by March 20, 2012, stating whether he intends to proceed with this litigation. *See id.*

On January 26, 2012, the Court denied without prejudice Defendant's Motion for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) and to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) [#37]. *See Minute Order* [#55]. At that time, the Court ordered that, if Plaintiff filed a Status Report by March 20, 2012 stating that he intended to proceed with this litigation, Defendant could re-file a motion pursuant to Fed. R. Civ. P. 12, if he so desired, no later than April 10, 2012. *See id.*

On March 13, 2012, Plaintiff timely filed a Motion Requesting the Re-opening of Case 11-cv-00048-MSK-KLM [#56]. Because the case has never been closed, instead merely "stayed," the Motion should have sought removal of the stay. The District Judge denied the motion for failure to comply with D.C.COLO.LCivR 7.1A. *See Order* [#57]. On March 23, 2012, Plaintiff filed the present Motion [#58]. As indicated above, the present Motion is more appropriately framed as a request to remove the stay. Defendant did not respond to the Motion.

On April 10, 2012, in compliance with the Court's Minute Order [#55], Defendant filed

its renewed Motion for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) and to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) [#59] (the "Motion to Dismiss"). On April 19, 2012, Plaintiff filed a request for an extension of time to respond to Defendant's motion [#60], which the District Judge granted on April 23, 2012 [#61].

In the present Motion [#58], Plaintiff states that he does not understand what D.C.COLO.LCivR 7.1A is or how he may comply with it in order for his case to proceed. Local Rule 7.1A provides as follows:

The Court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party or a *pro se* party, before filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel or a *pro se* party to resolve the disputed matter. The moving party shall state in the motion, or in a certificate attached to the motion, the specific efforts to comply with this rule.

A motion is subject to denial solely for failure to comply with the mandates of the Local Rule.¹ See *Nelson v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (stating that a *pro se* litigant is required to follow the same rules and procedures that represented litigants must follow).

As noted, Defendant did not file a response to Plaintiff's Motion seeking removal of the stay. However, Defendant filed his Motion to Dismiss eighteen days after Plaintiff filed the Motion, in compliance with the Court's Minute Order of January 26, 2012. Defendant did not seek an extension of time in which to file his Motion to Dismiss until after the Court ruled on Plaintiff's Motion seeking removal of the stay. Based on this background, the Court deems Plaintiff's motion to be uncontested. See *Reed v. Bennett*, 312 F.3d 1190, 1194-95 (10th Cir. 2002) (holding in part that a motion without a timely response may be deemed uncontested by the district court). Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff's Motion [#58] is **GRANTED**.

IT IS FURTHER **ORDERED** that the stay imposed on September 12, 2011 is **LIFTED**. The Court will set a Scheduling Conference, if necessary, after resolution of Defendant's Motion to Dismiss [#59].

Dated: April 30, 2012

¹ Plaintiff is directed to <http://www.cod.uscourts.gov/RepresentingYourself.aspx> for further information about proceeding as a *pro se* litigant in the United States District Court for the District of Colorado. Plaintiff is also directed to a copy of the Local Rules which may be found at <http://www.cod.uscourts.gov/LocalRules/Rules.aspx>. There, Plaintiff will find the text of D.C.COLO.LCivR 7.1A along with all other Local Rules with which Plaintiff must familiarize himself and comply in order to proceed in his litigation.