

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**FILED**
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 12 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 11-cv-01289-BNB

DARIAN L. HUNTER,

Plaintiff,

v.

UNKNOWN NAMED U.S. MARSHAL 1,
UNKNOWN NAMED U.S. MARSHAL 2,
AURORA POLICE OFFICER FANIA,
AURORA POLICE OFFICER MARK ASMUSSEN,
UNITED STATES MARSHALS SERVICE,
CLEAR CREEK COUNTY SHERIFF'S DEPT.,
TELLER COUNTY SHERIFF'S DEPT.,
FEDERAL BUREAU OF PRISONS,
FLORENCE CORRECTIONAL INSTITUTION,
J. WANDS, Warden,
R. SAMS, Otero/Bravo Unit Counselor,
M. TUCKER, Otero/Bravo Unit Manager,
MS./MRS. McEVOY, Otero/Bravo Unit Case Manager,
OKEATH, SHU Officer,
HOLDEN, SHU Officer,
MS./MRS. MARTINEZ, SHU Property Officer, and
MS./MRS. GREEN, Head of Education Department,

Defendants.

ORDER ALLOWING PLAINTIFF TO PROCEED
WITHOUT PAYMENT OF INITIAL PARTIAL FILING FEE

In an order filed on June 9, 2011, the court granted Plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Pursuant to § 1915(b)(1), the court ordered Plaintiff either to pay an initial partial filing fee of \$46.00 or to show cause why he has no assets and no means by which to pay the initial partial filing fee. On July 11 and August 16, 2011, the court entered minute orders granting Plaintiff extensions of

time to pay the initial partial filing fee. On August 18, 2011, Plaintiff submitted a certified copy of his inmate trust fund account statement that shows the available balance in his inmate account as of July 26, 2011, is \$0.65. On August 22, 2011, Plaintiff filed a motion seeking another extension of time to pay the initial partial filing fee alleging that prison officials have prevented him from paying the initial partial filing fee within the time allowed. For the reasons stated below, the motion for another extension of time will be denied, and Plaintiff will be allowed to proceed in this action without payment of an initial partial filing fee.

Title 28 U.S.C. § 1915 requires a prisoner bringing a civil action “to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). However, “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4). As noted above, Plaintiff has submitted a certified copy of his inmate trust fund account statement that indicates he lacked sufficient funds as of July 26, 2011, to pay the initial partial filing fee. The affidavit Plaintiff previously submitted in support of his motion seeking leave to proceed *in forma pauperis* reveals no other assets. Therefore, because he has demonstrated that he has no assets and no means by which to pay the initial partial filing fee, Plaintiff will be allowed to proceed in this action without payment of the initial partial filing fee designated in the court's June 9 order. Plaintiff remains obligated to pay the full \$350.00 filing fee through monthly installments as directed in the court's June 6 order and reiterated below. Accordingly, it is

ORDERED that Plaintiff's “Second Request for Extension of Time to File/Pay

Initial Filing Fee” (Doc. #20) filed on August 22, 2011, is denied. It is

FURTHER ORDERED that Plaintiff may proceed in this action without payment of the initial partial filing fee designated in the court’s June 9, 2011, order because he has shown cause why he has no assets and no means by which to pay an initial partial filing fee. Plaintiff remains obligated to pay the full amount of the required \$350.00 filing fee pursuant to § 1915(b)(1). It is

FURTHER ORDERED that until the \$350.00 filing fee is paid in full, Plaintiff shall make monthly payments to the court of twenty (20) percent of the preceding month’s income credited to his account or show cause why he has no assets and no means by which to make each monthly payment. Plaintiff is directed to make the necessary arrangements to have the monthly payments identified by the civil action number on this order. In order to show cause, Plaintiff must file a current certified copy of his trust fund account statement. It is

FURTHER ORDERED that if Plaintiff fails to have the appropriate payment sent to the clerk of the court each month or to show cause each month as directed above why he has no assets and no means by which to make the monthly payment, the complaint may be dismissed without prejudice and without further notice. It is

FURTHER ORDERED that the court may dismiss this action and may apply all or part of the filing fee payments tendered in this action to satisfy any filing fee debt the plaintiff may owe in a prior action or actions if the plaintiff fails to stay current with his payment obligations in the prior action or actions.

DATED September 12, 2011, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 11-cv-01289-BNB

Darian L Hunter
Reg. No. 28270-013
FCI Florence
PO Box 6000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on September 12, 2011.

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk