

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 12 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 11-cv-01770-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JOSEPH SCOTT CARTER,

Plaintiff,

v.

KATHRYN ANN HEROLD,

Defendant.

ORDER GRANTING 28 U.S.C. § 1915 MOTION
WITHOUT PAYMENT OF INITIAL PARTIAL FILING FEE

Plaintiff, Joseph Scott Carter, is a prisoner in the custody of the Colorado Mental Health Institute in Pueblo, Colorado. Plaintiff has filed *pro se* a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be granted. Based on the information about his financial status, the court finds that Plaintiff is unable to pay an initial partial filing fee pursuant to § 1915(b)(1).

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). If a prisoner is unable to afford the full amount of the filing fee when the case is filed, the statute provides for payment of the filing fee through an initial partial filing fee and monthly installments of the balance until the full filing fee is paid. 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).

Plaintiff may proceed in this action without payment of an initial partial filing fee. However, although he need not pay an initial partial filing fee, Plaintiff remains obligated to pay the required \$350.00 filing fee through monthly installments as directed in this order. Accordingly, it is

ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. No. 2) is granted. It is

FURTHER ORDERED that Plaintiff may proceed in this action without payment of 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) regardless of the outcome of this action. 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 monthly 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 Motion for Requesting of Assistance in Servicing of Summons and Complaint Upon Defendant (Doc. No. 3) is denied as unnecessary. It

is

FURTHER ORDERED that process shall not issue until further order of the court.

DATED July 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-01770-BNB

Joseph Scott Carter
Prisoner No. 97358
Colorado Mental Health Institute at Pueblo
1600 W 24th St
Pueblo, CO 81003

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

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk