

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01898-BNB

DAVID L. COLLINS, Secured Party Creditor,

Applicant,

v.

WARDEN V. EVERTT, KCCC, and
THE ATTORNEY GENERAL OF THE STATE OF JOHN SUTHERS,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 30 2011

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, David L. Collins, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. On July 21, 2011, he submitted to the Court *pro se* three documents. See ECF Nos. 1 through 3. The Court reviewed the documents and determined they were deficient. Therefore, on July 28, 2011, Magistrate Judge Boyd N. Boland directed Mr. Collins to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The July 28 order pointed out that Mr. Collins either must submit the \$350.00 filing fee for a civil action or a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 together with a certified copy of his trust fund account statement for the six-month period immediately preceding this filing. The July 28 order and the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §

1915 note this requirement. The July 28 order also informed Mr. Collins that he must submit a Prisoner Complaint.

The July 28 order directed Mr. Collins to obtain the Court-approved forms at www.cod.uscourts.gov and warned Mr. Collins that the action would be dismissed without prejudice and without further notice if he failed to cure the designated deficiencies within thirty days.

Mr. Collins did not cure the designated deficiencies. Instead, on August 25, 2011, he submitted a habeas corpus application pursuant to 28 U.S.C. § 2254 and a § 1915 motion and affidavit for a habeas corpus action together with an inmate account statement in both the instant action and in *Collins v. Evertt*, No. 11-cv-01967-LTB (D. Colo. Sept. 26, 2011). The statement, however, is deficient because it is not certified either by the warden or an appropriate officer at the facility where Mr. Collins is incarcerated, as required by Rule 3 of the Rules Governing Section 2254 Cases in the United States District Courts and the § 1915 motion and affidavit for a habeas corpus action.

Therefore, the application will be denied and the action dismissed without prejudice for Mr. Collins' failure to submit a properly certified account statement within the time allowed.

Accordingly, it is

ORDERED that the habeas corpus application is denied and the action dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, David L. Collins, within the time allowed, to submit a properly certified account statement. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 30th day of September, 2011.

BY THE COURT:

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 11-cv-01898-BNB

David L. Collins
Prisoner No. 122803
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER** and **JUDGMENT** to the above-named individuals on September 30, 2011.

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk