

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00252-BNB

MICHELE DORENE McCLAIN,

Plaintiff,

v.

CORRECTIONAL OFFICER MR. DUSSART,

Defendant.

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ORDER OF DISMISSAL

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Plaintiff, Michele Dorene McClain, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the La Vista Correctional Facility in Pueblo, Colorado. She initiated this action by filing a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 with the Court on January 31, 2012.

In an order filed on February 8, 2012, Magistrate Judge Boyd N. Boland ordered Ms. McClain to cure certain enumerated deficiencies in this case within thirty days. Specifically, Ms. McClain was directed to submit certified copy of her inmate account statement, which she filed with the Court on February 14, 2012. Magistrate Judge Boland granted Ms. McClain leave to proceed *in forma pauperis* by order dated February 16, 2012.

The February 16 Order requires Ms. McClain to pay the full amount of the \$350.00 filing fee in installments and directs her to pay an initial partial filing fee of \$13.00 within thirty days or to show cause why she has no assets and no means to pay

the initial fee by filing a current certified copy of her trust fund account statement. The Order warns Ms. McClain that if she fails to have the initial partial filing fee sent to the Clerk of the Court by the designated deadline or to show cause why she has no assets and no means by which to pay the initial fee the Complaint would be dismissed without further notice.

On March 8, 2012, Ms. McClain filed a motion with the Court requesting additional time to pay the initial partial filing fee. Magistrate Judge Boland granted the motion by minute order dated March 9, 2012. Magistrate Judge Boland directed Ms. McClain to pay the initial partial filing fee or show cause why she could not by April 16, 2012. Ms. McClain was again instructed that she must file a certified copy of her inmate account statement in order to show cause. She was also directed that her failure to comply would result in the dismissal of this action without further notice.

On March 20, 2012, Ms. McClain filed a letter to the Court and an inmate account statement. However, the inmate account statement was not certified. Ms. McClain has now failed either to pay the initial partial filing fee within the time allowed, as designated in the February 16 Order, or in the alternative to show cause why she has no assets and no means by which to pay the designated fee. Therefore, the action will be dismissed for failure to comply with Magistrate Judge Boland's February 16 Order.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal she must also pay the full \$455 appellate filing

fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for Ms. McClain's failure either to pay an initial partial filing fee of \$12.00 or to show cause why she has no assets and no means by which to pay the designated fee. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 27<sup>th</sup> day of April, 2012.

BY THE COURT:

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