

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01810-BNB

REYNALDO VILLA,

Plaintiff,

v.

JUDGE CHRISTINA HABAS,

Defendant.

ORDER

This matter is before the court on two motions filed *pro se* by Plaintiff, Reynaldo Villa. In one motion Mr. Villa seeks an extension of time to file an amended pleading and assistance from the court in obtaining the necessary form for filing an amended pleading (ECF No. 18). In the other motion he seeks clarification regarding the filing fee payments he has been ordered to make in this action (ECF No. 19).

Mr. Villa initiated this action by filing a pleading (ECF No. 1) in which he indicated that he intended to pursue claims pursuant to 42 U.S.C. § 1983. On July 12, 2012, the court ordered Mr. Villa to cure certain deficiencies, and one of the deficiencies noted was Mr. Villa's failure to use the court-approved Prisoner Complaint form. On August 16, 2012, Mr. Villa submitted two different versions of a Prisoner Complaint (ECF Nos. 14 & 15) and he cured the other deficiencies. On August 20, 2012, the court granted Mr. Villa leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and, although he was allowed to proceed without payment of an initial partial filing fee, Mr Villa was

directed to make monthly filing fee payments until the \$350.00 filing fee is paid in full. On August 21, 2012, after reviewing the Prisoner Complaints and finding that Mr. Villa appears to be asserting habeas corpus claims challenging the validity of his state court criminal conviction, the court entered an order directing Mr. Villa to file an amended pleading using the court-approved habeas corpus form.

Mr. Villa's motion for an extension of time to file an amended pleading will be granted. His motion for assistance from the court in obtaining the necessary form for filing an amended pleading will be denied because Mr. Villa previously has been able to obtain and submit filings in this action using the court-approved forms and he fails to explain in detail the steps he has taken to obtain the necessary form or why he has been unable to obtain the necessary form.

Mr. Villa's motion seeking clarification regarding the filing fee payments he was ordered to make will be granted. Because it appears that Mr. Villa is seeking habeas corpus relief in the instant action, the required filing fee is only \$5.00 and Mr. Villa is not required to make any filing fee payments. Therefore, the court's prior order granting Mr. Villa leave to proceed *in forma pauperis* and directing him to make monthly filing fee payments will be vacated. Mr. Villa will be allowed to proceed *in forma pauperis* in this action without payment of the \$5.00 filing fee. Accordingly, it is

ORDERED that Mr. Villa's motion for an extension of time to file an amended pleading and assistance from the court in obtaining the necessary form for filing an amended pleading (ECF No. 18) is GRANTED IN PART and DENIED IN PART. It is

FURTHER ORDERED that Mr. Villa shall have up to and including **October 22, 2012**, to file an amended pleading as directed. It is

FURTHER ORDERED that Mr. Villa shall obtain the court-approved Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 form (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that, if Mr. Villa fails within the time allowed to file an amended pleading as directed, the action will be dismissed without further notice. It is

FURTHER ORDERED that Mr. Villa's motion for clarification regarding the filing fee payments he has been ordered to make in this action (ECF No. 19) is GRANTED. It is

FURTHER ORDERED that the court's Order Granting 28 U.S.C. § 1915 Motion Without Payment of Initial Partial Filing Fee (ECF No. 16) is VACATED. It is

FURTHER ORDERED that Mr. Villa is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action.

DATED September 13, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge