

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01150-BNB

JAN B. HAMILTON,

Plaintiff,

v.

ERIN FERNANDEZ ELY,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Jan B. Hamilton, was detained at the Pitkin County jail at the time she initiated this action on April 30, 2013, by filing a notice purporting to appeal an order issued by the Colorado Supreme Court.

On May 1, 2013, Magistrate Judge Boyd N. Boland reviewed the submitted document and determined that it was deficient because the federal district court does not have jurisdiction over orders issued by the state appellate courts. Magistrate Judge Boland informed Ms. Hamilton that she must file a complaint asserting a basis for jurisdiction under the federal question statute, 28 U.S.C. § 1331, or the diversity statute, 28 U.S.C. § 1332. Accordingly, Magistrate Judge Boland directed Plaintiff to file a Prisoner Complaint on the court-approved form within thirty days. Ms. Hamilton was further ordered to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved form, or to pay the \$350.00 filing fee in this action, within thirty days. The May 1 Order warned Ms. Hamilton that failure to comply with the Order by the court-ordered deadline would result in dismissal of this action

without further notice.

On May 13, 2013, Ms. Hamilton submitted a Letter to the Court requesting copies of the court-approved forms necessary to comply with the May 1 Order. [Doc. # 4].

Magistrate Judge Boland issued a Minute Order on May 15, 2013, directing the clerk of the court to mail to Plaintiff blank copies of the forms for filing a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C.

§ 1915. [Doc. # 6]. The May 15, 2013 Minute Order further directed Plaintiff to cure the deficiencies noted in the May 1, 2013 Order within thirty days.

On May 20, 2013, Ms. Hamilton filed a motion requesting an extension of time until June 15, 2013, to cure the deficiencies in this action. [Doc. # 8]. In a May 21, 2013 Minute Order, Magistrate Judge Boland granted Plaintiff thirty days to comply with the May 1 Order. [Doc. # 11]. The Court reminded Plaintiff that she must assert her constitutional claims on the court-approved Prisoner Complaint form. [*Id.*].

In a May 29, 2013 Minute Order, Magistrate Judge Boland denied Ms. Hamilton's request to re-assign the case to Magistrate Judge Michael J. Watanabe and granted Plaintiff an additional extension of time to June 28, 2013, to comply with the May 1 Order. [Doc. # 14].

On July 1, 2013, Ms. Hamilton filed a Motion to Clarify and Update [Doc. #15]. In the Motion, Plaintiff advised the Court that she had been released from the Pitkin County jail. She also explained the bases of her purported claims. In short, Ms. Hamilton seeks to sue a state district court judge and a retired state district court judge for violation of her constitutional rights and state statutory and common law torts.

On July 2, 2013, Magistrate Judge Craig B. Shaffer entered an Amended Order

Directing Plaintiff to Cure Deficiencies. The July 2 Order advised Ms. Hamilton that the Motion to Clarify and Update did not comply with the May 1 Order because Plaintiff had not filed her claims on the court-approved Prisoner Complaint or Complaint form. Magistrate Judge Shaffer also informed Plaintiff that the state district judges enjoy absolute immunity from suit for acts performed in their official capacities. *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978). Furthermore, “judicial immunity is not overcome by allegations of bad faith or malice.” *Mireles v. Waco*, 502 U.S. 9, 12 (1991). Finally, Magistrate Judge Shaffer directed Ms. Hamilton in the July 2 Order to submit a non-prisoner Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, or pay the \$350.00 filing fee. Plaintiff was ordered to correct the noted deficiencies within thirty days of the July 2 Order and was told that she could obtain the Court-approved Complaint form and non-prisoner Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form, along with the applicable instructions, at www.cod.uscourts.gov.

On July 16, 2013, the copy of the July 2, 2013 Order was returned to the Court as undeliverable. [Doc. #17]. The clerk of the court resent a copy of the July 2 Order to Plaintiff at the correct address. On July 18, 2013, Magistrate Judge Boland issued a Minute Order granting Ms. Hamilton until August 19, 2013, to comply with the July 2 Order. Plaintiff was advised that failure to cure the designated deficiencies by the court-ordered deadline would result in dismissal of the action without further notice.

On July 31, 2013, Ms. Hamilton filed a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved form. However, Plaintiff has failed to file her claims on the court-approved Complaint or Prisoner Complaint form, as

directed in the July 1 Order. She has not communicated with the Court since July 31, 2013. The fact that Ms. Hamilton filed a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the correct form indicates that she does have access to the court-approved forms. Accordingly, this action will be dismissed.

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 this action is dismissed without prejudice for the failure of Plaintiff, Jan B. Hamilton, to comply with the Court's July 2 Amended Order Directing Plaintiff to Cure Deficiencies and for failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. Ms. Hamilton may file a motion in the Tenth Circuit Court of Appeals.

DATED at Denver, Colorado, this 28th day of August, 2013.

BY THE COURT:

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