

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01964-BNB

TROY LEE SCHNEIDER,

Plaintiff,

v.

COLORADO PUBLIC DEFENDERS OFFICE, and
NELISSA MELFIELD, Public Defender,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Troy Lee Schneider, currently is incarcerated at the Boulder County Jail. He submitted *pro se* a Prisoner Complaint (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3).

The Court reviewed the documents and determined they were deficient. Therefore, on July 23, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Mr. Schneider to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The July 23 order pointed out that Mr. Schneider failed to submit either the \$400.00 filing fee or a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the proper, Court-approved form, i.e., the current form revised October 1, 2012, with an authorization allowing the prison facility to calculate and disburse funds from his inmate trust fund account and certificate of prison official, and a certified copy of his trust fund account statement for the six-month period immediately

preceding this filing obtained from the appropriate prison official. The July 23 order directed him to obtain, with the assistance of his case manager or the facility's legal assistant, the current Court-approved form for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The July 23 order warned Mr. Schneider that if he failed to cure the designated deficiencies within thirty days, the action would be dismissed without prejudice and without further notice.

On July 31, 2013, Mr. Schneider submitted an uncertified and insufficient account statement (ECF No. 5). On August 5, 2013, Magistrate Judge Boland entered a minute order (ECF No. 8) explaining to Mr. Schneider how to cure the deficiencies designated in the July 23 order and granting him an additional fifteen days in which to do so. On August 1 and August 7, 2013, Mr. Schneider submitted two motions for the appointment of counsel (ECF Nos. 6 and 9), both of which were denied as premature.

On August 13, 2013, Mr. Schneider filed a motion titled "Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)" (ECF No. 11), which the Court treated as an objection from the August 5 minute, which it overruled on August 21, 2013. See ECF No. 12.

Mr. Schneider has failed to cure the deficiencies designated in the July 23 cure order within the time allowed. Therefore, the action will be dismissed without prejudice for Mr. Schneider's failure to cure the designated deficiencies as directed within the time allowed.

Finally, the Court certifies pursuant to § 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 Mr. Schneider files a notice of appeal he also must pay the full \$455.00 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 (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Troy Lee Schneider, to cure the deficiencies designated in the order to cure of July 23, 2013, within the time allowed. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3) is denied as moot. It is

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

FURTHER ORDERED that any other pending motions are denied as moot.

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