

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02029-BNB

WILLIAM ELLER,

Plaintiff,

v.

STEVE HARTLEY,
DARYL VIGIL,
RENEE APODACA,
MR. RICHA, [First] Name Unknown,
MR. POUNDS, [First] Name Unknown,
PENNY SPEARING, and
GLENN CLAUNCH,

Defendants.

ORDER DIRECTING PLAINTIFF TO SUBMIT AMENDED MOTION
FOR LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

When Plaintiff, William Eller, initiated the instant action, he was a prisoner in the custody of the Colorado Department of Corrections incarcerated at the correctional facility in Sterling, Colorado. In a notice filed with the Court on September 5, 2013 (ECF No. 18), Plaintiff indicates that he has been released from the Sterling Correctional Facility and resides in Fruita, Colorado. He has failed to clarify as directed in the minute of August 23, 2013 (ECF No. 15), whether he currently is on parole.

In any event, Plaintiff's continuing obligation to pay the filing fee is to be determined, like any nonprisoner, solely on the basis of whether he qualifies for *in forma pauperis* status. See *Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); see also *McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re*

Prison Litigation Reform Act, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2^d Cir. 1996). Therefore, Plaintiff will be ordered to submit an amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Alternatively, Plaintiff may elect to pay the \$400.00 filing fee to pursue his claims in this action. Accordingly, it is

ORDERED that **within thirty (30) days from the date of this order** Plaintiff submit to the Court an amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 **used by nonprisoners**. Alternatively, Plaintiff may elect to pay the \$400.00 filing fee to pursue his claims in this action. It is

FURTHER ORDERED that Plaintiff shall obtain the Court-approved form used in filing a nonprisoner Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that if Plaintiff fails to comply with the instant order, within thirty days of the date of this order, the Complaint and action will be dismissed without further notice. It is

FURTHER ORDERED that the following documents are denied as moot because Plaintiff no longer is incarcerated: “Affidavit and Declarations of Indigency” (ECF No. 3) filed on July 31, 2013; “Motion: To Proceed In Forma Pauperis” (ECF No. 12) filed on August 21, 2013; and “Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915” (ECF No. 13) filed on August 21, 2013. It is

FURTHER ORDERED that the motion for leave to proceed without appointment of magistrate judge (ECF No. 4) filed on July 31, 2013; and the combination “Motion [for] Leave to Proceed With Subpoena Services” and motion titled “Order and Order

Directing Service by the United States Marshal Without Prepayment of Costs” (ECF No. 10) filed on August 21, 2013, are denied as premature.

DATED September 13, 2013, at Denver, Colorado.

BY THE COURT:

s/Boyd N. Boland
United States Magistrate Judge