

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03407-BNB

CHARLES ROBERT HARRIS,

Plaintiff,

v.

D. BARKEBILE, Warden,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Charles Robert Harris, is a prisoner in the custody of the federal Bureau of Prisons at Florence ADMAX in Florence, Colorado. Mr. Harris initiated this action by filing *pro se* a complaint (ECF No. 1) based on alleged violations of his constitutional rights. On December 18, 2013, Magistrate Judge Boyd N. Boland entered an order directing Mr. Harris to cure certain deficiencies if he wished to pursue any claims in this action. Specifically, Magistrate Judge Boland directed Mr. Harris to file a complaint on the Court-approved form and submit a properly supported motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Harris was warned that if he failed to cure the deficiencies within thirty days the action would be dismissed without further notice.

Mr. Harris filed an Objection (ECF No. 4) contending that he did not need to use the court-approved Prisoner Complaint and § 1915 Motion and Affidavit forms. On January 7, 2014, Judge Lewis T. Babcock overruled Plaintiff's Objection and gave Plaintiff thirty days from the date of the order to comply with the Court's December 18

order. (ECF No. 5) Mr. Harris was warned again that the action would be dismissed without further notice if he failed to cure the designated deficiencies.

Mr. Harris has failed to cure the deficiencies within the time allowed and he has failed to respond in any way to Magistrate Judge Boland's December 18 order and Judge Babcock's January 7 order. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies and failure to prosecute.

Furthermore, 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 he also must pay the full \$505 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Harris failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

DATED at Denver, Colorado, this 13th day of February, 2014.

BY THE COURT:

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