

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-03497-BNB

CLIFFORD DENNIS NICHOLAS,

Plaintiff,

v.

BARBRA GOSSETT - Medical Administrator (LCF),
DR. KUCHER - LCF,
DENISE ASHUER - Nurse, (LCF),
MISS BRIGGS, Nurse, (LCF),
JANE DOE - Dietician (CDOC),
LT. JACKSON, Hearing Officer (LCF),
MRS. INFINITE, Investigator - (LCF),
SGT. KELLY, (LCF),
CAPT. SMITH, Shift Commander (LCF),
LT. LAWSON, (FCF),
LT. REICH, (FCF),
LT. BALDERSTON, Housing (FCF),
MISS ROBINO - Sgt. Housing (FCF),
MRS. BORNS - Sgt. Unit 2 (FCF),
MISS SIMONS, Case Manager (FCF),
MISS STRICKLETT, CO Unit 2 (FCF),
MISS HERRARA - Case Manager (KCCF),
MISS BERNIE, Sgt. Faith Pod (KCCF),
MR. MCCALUM, Case Manager (LCF), and
MR. GILLIS, Case Manager (LCF),

Defendants.

ORDER GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

Plaintiff, an inmate at the Limon Correctional Facility in Limon, Colorado, has submitted to the court *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 20). That motion will be granted and Plaintiff will be allowed to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Based on

the information about his financial status (see ECF No. 20 at 6-10), which indicates Plaintiff has had a negative balance in his inmate account during the relevant time, the court finds that Plaintiff is unable to pay an initial partial filing fee pursuant to § 1915(b)(1).

Title 28 U.S.C. § 1915 requires a prisoner bringing a civil action “to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). If a prisoner is unable to afford the full amount of the filing fee when the case is filed, the statute provides for payment of the filing fee through an initial partial filing fee and monthly installments of the balance until the full filing fee is paid. However, “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4).

Plaintiff may proceed in this action without payment of an initial partial filing fee. However, although he need not pay an initial partial filing fee, Plaintiff remains obligated to pay the required \$350.00 filing fee through monthly installments regardless of the outcome of this action. Plaintiff has consented to disbursement of partial payments of the filing fee from his inmate account. (See ECF No. 20 at 3.) Accordingly, it is

ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 20) is GRANTED. It is

FURTHER ORDERED that Plaintiff may proceed in this action without payment of an initial partial filing fee. It is

FURTHER ORDERED that Plaintiff’s custodian shall disburse from Plaintiff’s inmate account monthly payments of 20 percent of the preceding month’s income

credited to this inmate account until Plaintiff has paid the total filing fee of \$350.00. See 28 U.S.C. §1915(b)(2). Interference by Plaintiff in the submission of these funds will result in the dismissal of this action. It is

FURTHER ORDERED that Plaintiff is advised that notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court shall dismiss at any time all or any part of such complaint which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §1915(A)(b); 28 U.S.C. § 1915(e)(2). It is

FURTHER ORDERED that Plaintiff's custodian shall continue to disburse monthly payments from Plaintiff's inmate account until full payment of the filing fee has been paid to the Court, even after disposition of the case and regardless of whether relief is granted or denied. It is

FURTHER ORDERED that the Clerk of the Court shall not issue process until further order of the Court. It is

FURTHER ORDERED that the Clerk of the Court shall mail a copy of this Order to the Limon Correctional Facility, Attention: Inmate Accounts, at 49030 Colorado 71 South, Limon, CO 80826. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF Nos. 3 and 16) are DENIED as improperly filed. It is

FURTHER ORDERED that the Motion for Explanation for Deficiencies, Letter of Intent - Additional Claims (ECF No. 14) is DENIED as moot. It is

FURTHER ORDERED that the Motion to Withdraw Medical Emergency (ECF No.

15) is GRANTED.

DATED April 1, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge