

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01453-BNB

LEE B. JOHNSON,

Plaintiff,

v.

YELLOW CAB CO.,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Lee Johnson, resides in Denver, Colorado. Mr. Johnson initiated this action by filing, *pro se*, a Complaint and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.

On May 27, 2014, Magistrate Judge Boyd N. Boland reviewed the submitted documents and determined that they were deficient. Magistrate Judge Boland directed Plaintiff to resubmit his § 1915 motion on the court-approved Application to Proceed in District Court without Prepaying Fees or Costs (AO Form 239; Rev. 12/13) which is available on the Court's website at www.cod.uscourts.gov. (ECF No. 4). Magistrate Judge Boland advised Plaintiff that he could pay the \$400.00 filing fee in lieu of resubmitting the § 1915 motion and affidavit. (*Id.*). Magistrate Judge Boland warned Plaintiff in the May 27, 2014 Order that failure to cure the deficiencies noted would result in dismissal of this action without further notice. (*Id.*).

On June 2, 2014, Plaintiff's copy of the May 27 Order was returned to the Court as undeliverable because the address on the envelope was incomplete. (ECF No. 5).

On July 8, 2014, Magistrate Judge Boland issued a Minute Order directing the Clerk of the Court to resend a copy of the May 27, 2014 Order to Plaintiff at the correct address. (ECF No. 7). In the July 8 Minute Order, Magistrate Judge Boland directed Mr. Johnson to comply with the May 27 Order within thirty days.

Mr. Johnson has failed to comply with the May 27 Order and there is nothing in the Court's docket to indicate that he did not receive the copy of the Order that was resent to him on July 8, 2014. (ECF No. 8).

Local Rules 1.2 and 5.1(c) of the Local Rules of Practice - Civil for this Court require litigants to use the Court-approved forms found on the Court's website. The United States Court of Appeals for the Tenth Circuit repeatedly has upheld the requirement that *pro se* litigants comply with local court rules requiring use of proper Court-approved forms and rejected constitutional challenges to such rules. See, e.g., *Georgacarakos v. Watts*, 368 F. App'x 917, 918-19 (10th Cir. 2010) (district court did not abuse its discretion in dismissing civil rights action without prejudice for federal prisoner's noncompliance with local rules requiring use of proper court-approved form to file complaint and district court's order to comply), *Durham v. Lappin*, 346 F. App'x 330, 332-33 (10th Cir. 2009) (it was within district court's discretion to dismiss prisoner's complaint for failure to comply with local rules requiring *pro se* litigants to use court-approved forms, and local rule did not violate prisoner's equal protection rights); *Kosterow v. United States Marshal's Serv.*, 345 F. App'x 321, 322-33 (10th Cir. 2009) (it was within district court's discretion to dismiss complaint for failure to use proper court form).

Accordingly, it is

ORDERED that this action is DISMISSED without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Lee Johnson, to comply with the May 27, 2014 Order Directing Plaintiff to Cure Deficiencies. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied for the purpose of appeal. 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. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Johnson files a notice of appeal he must also 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. It is

FURTHER ORDERED that all pending motions are DENIED as moot.

DATED at Denver, Colorado, this 25th day of August, 2014.

BY THE COURT:

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