

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02679-BNB

EDWIN MARK ACKERMAN,

Applicant,

v.

UNITED STATES ARMY, and
UNITED STATES OF AMERICA,

Respondents.

ORDER OF DISMISSAL

Applicant, Edwin Mark Ackerman, is in the custody of the Colorado Department of Corrections at the Colorado Territorial Correctional Facility in Cañon City, Colorado. Applicant initiated this action by filing *pro se* a Motion for Dismissal of Detainer. On October 1, 2014, Magistrate Judge Boyd N. Boland directed Applicant to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland instructed Applicant to submit his claims on a Court-approved form used in filing 28 U.S.C. § 2241 actions and either to pay the \$5 filing fee or in the alternative submit a request to proceed pursuant to 28 U.S.C. § 1915 in a habeas action.

Magistrate Judge Boland warned Applicant that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days. On October 22, 2014, Applicant submitted a Prisoner's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 in a Habeas Corpus Action. Applicant also submitted his claims on a Court-approved form that is used when

filing a 28 U.S.C. § 2255 motion. Neither of the forms are the proper Court-approved forms that are used when filing a § 2241 action. Applicant has filed over twenty actions with this Court. Most recently he filed *Ackerman v. Warden*, No. 12-cv-02138-LTB (D. Colo. Nov. 30, 2012), and *Ackerman v. Davis, et al.*, No. 13-cv-03487-RM (D. Colo. July 7, 2014). Applicant was able to comply with the Court's directives to cure deficiencies in Case No. 12-cv-02138-LTB, and in Case No. 13-cv-03487-RM he was able to submit the proper forms without direction from the Court. Therefore, because Applicant has shown that he is capable of curing deficiencies as directed but failed to do so in this case, the action will be dismissed for failure to comply with the October 1, 2014 Order within the time allowed.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not 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 Applicant files a notice of appeal he 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 Application is denied and the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to cure all deficiencies and for failure to prosecute. It is

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

FURTHER ORDERED that no certificate of appealability shall issue because Applicant has failed to show that jurists of reason would find it debatable that the district court was correct in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 7th day of November, 2014.

BY THE COURT:

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