

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02985-GPG

ANTHONY MARTINEZ,

Plaintiff,

v.

GILBERTO E. ESPIONSA,
JOHN R. OLSON,
JUDGE JOHN BROOKS, JR.,
ROBERT P. FULLERTON,
JAMES C. FLANIGAN,
JUDGE SANDRA I. ROSNBURG, and
JUDGE LARRY J. NAVES,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Anthony Martinez, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Martinez initiated this action by filing *pro se* a confusing letter (ECF No. 1) alleging that his civil rights have been violated. On November 4, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Martinez to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland directed Mr. Martinez to file on the proper form a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file on the proper form a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with a certified copy of his inmate trust fund account statement and an authorization to calculate and disburse filing fee payments. Mr. Martinez was warned

that the action would be dismissed without further notice if he failed to cure these deficiencies within thirty days.

Mr. Martinez has failed to cure all of the deficiencies within the time allowed. Instead, on November 28, 2014, Mr. Martinez submitted a response (ECF No. 5) to the order to cure deficiencies that includes a confusing cover letter, a copy of the original letter that initiated this action, copies of documents filed in other cases Mr. Martinez has initiated in the past, and a copy of his inmate trust fund account statement. Mr. Martinez has not filed a Prisoner Complaint or any other document that provides a clear statement of whatever claims he may intend to assert and he has failed either to pay filing and administrative fees totaling \$400.00 or to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 with all of the required supporting documents. Therefore, the action will be dismissed without prejudice for failure to cure all of the deficiencies.

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. Martinez failed to cure all of 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.

DATED at Denver, Colorado, this 10th day of December, 2014.

BY THE COURT:

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