

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

Civil Action No. 14-cv-03058-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

DEWAYNE CELESTINE, Individually and on Behalf of any Other Similarly Situated,

Plaintiff,

v.

STATE OF COLORADO,
RICK RAEMISCH,
ROGER WERHOLTZ,
TONY CAROCHI,
TOM CLEMENTS, By and Through his Estate,
ARISTEDES ZAVARIS,
JOE ORTIZ, and
JOHN SUTHERS, All in Their Individual and Official Capacities as Executive Directors
for the C.D.O.C.,

Defendants.

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

Plaintiff, Dewayne Celestine, a *pro se* prisoner litigant, has submitted a Prisoner Complaint, ECF No. 1, a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, ECF No. 3, and a "Motion to Intervene in Ankeney v. State Civil Action: 14-cv-00007-MSK-KMT," ECF No. 4. The Motion to Intervene in Ankeney v. State Civil Action Number: 14-cv-00007-MSK-KMT will be denied without prejudice. If Plaintiff wishes to intervene in Case No. 14-cv-0007-MSK-KMT, he must file a motion to intervene in that action.

The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be granted. Based on the information about Plaintiff's financial status, the

Court finds that Plaintiff is able to pay an initial partial filing fee of \$28.00 pursuant to § 1915(b)(1). Plaintiff has consented to disbursement of partial payments of the filing fee from his inmate account. See ECF No. 3 at 5.

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). Accordingly, it is

ORDERED that the Motion to Intervene in Ankeney v. State Civil Action Number: 14-cv-00007-MSK-KMT, ECF No. 4, is denied without prejudice. It is

FURTHER ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, ECF No. 3, is granted. It is

FURTHER ORDERED that, within thirty days of the date of this Order Plaintiff’s custodian shall disburse from Plaintiff’s prison account, if funds are available in keeping with 28 U.S.C. § 1915(b), an initial partial filing fee of \$28.00 to the Clerk of the United States District Court for the District of Colorado, which represents 20 percent of the greater of the (1) average monthly deposits, or (2) average monthly balance in Plaintiff’s prison accounts for the six-month period immediately preceding the filing of the Complaint. It is

FURTHER ORDERED that after payment of the initial partial filing fee, 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. 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 send a copy of this Order to DOC_inmateaccounts@state.co.us.

DATED November 15, 2014, at Denver, Colorado.

BY THE COURT:

S/ Gordon P. Gallagher

United States Magistrate Judge