

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Miscellaneous Action No. 14-mc-00018-BNB

(The above miscellaneous 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.)

CHRISTOPHER CLARK,

Petitioner,

v.

[NO NAMED RESPONDENT],

Respondent.

ORDER DIRECTING PETITIONER TO CURE DEFICIENCIES,
AND GRANTING FED. R. CIV. P. 27 PETITION

Petitioner, Christopher Clark, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the correctional facility in Sterling, Colorado. He has submitted *pro se* a letter (ECF No. 1) to the Court. As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the letter is deficient as described in this order. Petitioner will be directed to cure the following if he wishes to pursue his claims. Any papers that Petitioner files in response to this order must include the miscellaneous action number on this order.

Mr. Clark has failed either to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or tender the \$46.00 filing fee for a miscellaneous case. According to the Schedule of Fees for this Court, the fee for a miscellaneous civil case (mc) is \$46.00. The Schedule of Fees is viewable on the

Court's website, www.cod.uscourts.gov, by clicking on "Court Operations" and selecting "Fee Schedule" from the drop-down menu. Mr. Clark will be afforded the opportunity either to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or to tender the \$46.00 miscellaneous case filing fee.

In the letter he filed, Mr. Clark asks the Court to require the unnamed Respondent to produce certain documents and information. He contends that he needs the information for a civil action he plans to file in this Court. He also seeks legal advice. Because Mr. Clark is proceeding *pro se*, the letter will be construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). To the extent Mr. Clark asks the Court to require the unnamed Respondent to produce certain documents and information, the letter will be treated as a petition pursuant to Rule 27 of the Federal Rules of Civil Procedure. To the extent Mr. Clark asks the Court for legal advice, the request will be denied. The Court does not provide legal advice to litigants. His other requests concerning service and the appointment of counsel to represent him or increased law library access will be denied as premature.

Prior to bringing an action, Fed. R. Civ. P. 27 allows a person who wants "to perpetuate testimony regarding any matter cognizable in a United States court" to file a verified petition "in the district court for the district where any expected adverse party resides." Fed. R. Civ. P. 27(a)(1). Relief under Rule 27 is available if the Court is "satisfied that the perpetuation of the testimony may prevent a failure or delay of justice." Fed. R. Civ. P. 27(a)(3).

Rule 27(a)(1) lists five requirements for a properly supported petition. Even construing Mr. Clark's petition liberally, he has not satisfied all five requirements. Because Mr. Clark has failed to satisfy the requirements for a properly supported petition, the Court is unable to determine whether Mr. Clark is entitled to relief under Fed. R. Civ. P. 27(a). However, rather than dismiss this action at this time, Mr. Clark will be allowed to file an amended petition that conforms to the five requirements of Fed. R. Civ. P. 27(a).

Accordingly, it is

ORDERED that Petitioner, Christopher Clark, cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Petitioner files in response to this order must include the civil action number on the order. It is

FURTHER ORDERED that Mr. Clark either submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or tender the \$46.00 miscellaneous case filing fee **within thirty (30) days from the date of this order**. It is

FURTHER ORDERED that the clerk of the Court mail to Petitioner, together with a copy of this order, a copy of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with the applicable instructions, and Petitioner use the form if he does not intend to tender the \$46.00 miscellaneous case filing fee. It is

FURTHER ORDERED that to the extent Mr. Clark asks the Court to require the unnamed Respondent to produce certain documents and information, the letter is treated as a petition pursuant to Rule 27 of the Federal Rules of Civil Procedure, and is granted at this time. It is

FURTHER ORDERED that the clerk of the Court mail a copy of the petition to the unnamed Respondent at the Sterling Correctional Facility. It is

FURTHER ORDERED that Mr. Clark file **within thirty days from the date of this order** an amended petition that conforms to the requirements of Fed. R. Civ. P. 27(a). It is

FURTHER ORDERED that the amended petition shall be titled "Amended Petition Pursuant to Fed. R. Civ. P. 27(a)" and shall be filed with the Clerk of the Court for the United States District Court for the District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589, **within thirty days from the date of this order**. It is

FURTHER ORDERED that, if Mr. Clark fails to cure the designated deficiencies **within thirty days from the date of this order**, this action will be dismissed.

DATED February 10, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge