

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02526-GPG

ALLEN M. DAWKINS,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS INMATE BANKING,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Allen M. Dawkins, is a prisoner in the custody of the Colorado Department of Corrections. On December 7, 2015, Mr. Dawkins filed *pro se* a Prisoner Complaint (ECF No. 5) pursuant to 42 U.S.C. § 1983. On December 8, 2015, Magistrate Judge Gordon P. Gallagher granted Mr. Dawkins leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and directed Mr. Dawkins' custodian to make monthly payments from Mr. Dawkins' inmate account until the \$350.00 filing fee is paid in full. On December 10, 2015, Magistrate Judge Gallagher ordered Mr. Dawkins to file an amended complaint within thirty days that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.

On December 29, 2015, Mr. Dawkins filed a "Motion to Dismiss" (ECF No. 9) asking the Court to dismiss this action because his claim is moot. Mr. Dawkins also asked the Court in the "Motion to Dismiss" to dismiss all filing fees so that he is not charged for this action.

On January 6, 2016, Magistrate Judge Gallagher entered an order advising Mr. Dawkins that the request to dismiss all filing fees must be denied because a prisoner who brings a civil action is required to pay the entire filing fee. See 28 U.S.C. § 1915(b)(1). However, because it was not clear whether Mr. Dawkins' request to dismiss the action was contingent upon his request to dismiss all filing fees, Magistrate Judge Gallagher provided Mr. Dawkins one more opportunity to file an amended complaint that complies with the pleading requirements of Rule 8. Magistrate Judge Gallagher further advised Mr. Dawkins that, if he still wished to dismiss the action, he should clarify his intention in an appropriate response. Magistrate Judge Gallagher warned Mr. Dawkins that the action would be dismissed without further notice if he failed to file an amended complaint as directed within thirty days.

Mr. Dawkins has not filed an amended complaint as directed and he has not responded in any way to Magistrate Judge Gallagher's January 6 order. Therefore, the action will be dismissed without prejudice for failure to prosecute and file an amended complaint that complies with the pleading requirements of Rule 8 as directed. 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 Plaintiff failed to prosecute and file an amended complaint as directed. It is

FURTHER ORDERED that the “Motion to Dismiss” (ECF No. 9) is denied as moot. 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 11th day of February, 2016.

BY THE COURT:

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