

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02733-GPG

JAMES KERN,

Plaintiff,

v.

ANDREWS, FNU,
ALLEN, FNU,

Defendants.

SECOND ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCIES

Plaintiff, James Kern, filed *pro se* a Prisoner Complaint on December 16, 2015. (ECF No. 1). On December 21, 2015, the Court determined that the document was deficient and directed Plaintiff to cure the deficiencies if he wished to pursue his claims in this action. (ECF No. 3). Specifically, the Court instructed Plaintiff to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or to pay the filing in full.

In response, on January 26, 2016, Plaintiff submitted a Letter to the Court (ECF No. 4) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5). In the Letter, Plaintiff notified the Court that he does not have access to the court-approved forms for the District of Colorado. He also requested that he be able to use the initial installment fee of \$39.00 that was paid for his previous case, 15-cv-00957-GPG, which was dismissed, as part of the filing fee for this case. That request is denied. As the Authorization states in the § 1915 Motion, "the total filing fee

of \$350.00 is due and will be paid from [the inmate's] trust fund account or institutional equivalent *regardless of the outcome of this case.*" (ECF No. 5 at 3). Plaintiff signed the same authorization for his previous case. See 15-cv-00-957, ECF No. 9 at 3.

Additionally, as part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5) is deficient as described in this order. Plaintiff will be directed to cure the following if he wishes to pursue his claims. Any papers that Plaintiff files in response to this Order must include the civil action number on this Order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing. (The trust fund statement must show the **deposits and balances** for the 6-month period).
- (4) is missing certificate showing current balance in prison account
- (5) is missing required financial information
- (6) is missing authorization to calculate and disburse filing fee payments
- (7) is missing an original signature by the prisoner
- (8) is not on proper form
- (9) names in caption do not match names in caption of complaint, petition or habeas application
- (10) other:

Complaint, Petition or Application:

- (11) is not submitted
- (12) is not on proper form
- (13) is missing an original signature by the prisoner
- (14) is missing page nos.
- (15) uses et al. instead of listing all parties in caption
- (16) names in caption do not match names in text
- (17) addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (18) other: _____.

Accordingly, it is

ORDERED that Plaintiff cure the deficiency designated above **within thirty days from the date of this Order**. It is

FURTHER ORDERED that the Clerk of Court shall mail a copy of the Court-approved Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, along with the applicable instructions, to the Plaintiff. Plaintiff shall use the court-approved form when curing the designated deficiency. It is

FURTHER ORDERED that if Plaintiff fails to cure the designated deficiency **within thirty days from the date of this Order**, the action will be dismissed without further notice.

DATED February 1, 2016, at Denver, Colorado.

BY THE COURT:

s/Gordon P. Gallagher
United States Magistrate Judge