

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GERALD VILLANUEVA, #A4005447	)	CIV. NO. 14-00461 SOM/KSC
	)	
Plaintiff,	)	ORDER DENYING LEAVE TO
	)	PROCEED IN FORMA PAUPERIS AND
vs.	)	DENYING LEAVE TO PROCEED
	)	WITHOUT PAYMENT OF FEES AS A
MICHAEL S. HOFFMAN, NOLAN	)	VETERAN
ESPINDA, NOLAN UEHARA, MONTE	)	
McCOMBER,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS AND DENYING LEAVE TO PROCEED WITHOUT PAYMENT OF FEES AS A VETERAN**

On October 16, 2014, this court denied Plaintiff’s request for in forma pauperis status and dismissed this prisoner civil rights action without prejudice pursuant to 28 U.S.C. § 1915(g). Plaintiff was told he could move to reopen the case within twenty-eight days with concurrent payment of the filing fee, or he could commence a new action with concurrent payment of the filing fee. See Doc. No. 3, PageID #36. Before the court is Plaintiff’s Motion to Proceed In Forma Pauperis and Motion to Proceed as a Veteran, without payment of fees or costs under Supreme Court Rule 40(1). Doc. Nos. 5, 6.

Plaintiff first argues that, because he was granted in forma pauperis status in *Villanueva v. Hawaii*, Civ. No. 14-00233 JMS, it should be granted in this case. Plaintiff is incorrect. Civil No. 14-00233 JMS was a petition for writ of habeas corpus. Section 1915(g)’s restrictions on proceeding in forma pauperis do

not apply to prisoners seeking habeas relief, however. See *Andrews v. King*, 398 F.3d 1113, 1122 (9th Cir. 2005).

Plaintiff next seeks leave to proceed without payment of fees as a veteran, pursuant to Supreme Court Rule 40(1). The Supreme Court Rules are rules of procedure for the United States Supreme Court. They do not generally apply to the district or appellate courts and they do not supercede statutes, such as 28 U.S.C. § 1915(g). Moreover, Rule 40(1)'s waiver of fees for veterans is restricted to veterans who are "suing under any provision of law exempting veterans from the payment of fees or court costs." Sup. Ct. R. 40(1). Plaintiff challenges the conditions of his confinement relating to a prison disciplinary hearing and does not seek relief under any law that exempts veterans from the payment of fees.

Plaintiff's Motions are DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, November 21, 2014.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
Chief United States District Judge

*Villanueva v. Hoffman*, Civ. No. 14-00461 SOM/KSC; 3 stks/2014/Villanueva 14-461;  
J:\PSA Draft Ords\SOM\Villanueva 14-461 som (dny ifp again, no file as veteran).wpd