

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

JUSTIN D. PIERCE,

Plaintiff,

v.

CASE NO. 22-3300-JWL-JPO

**LARNED CORRECTIONAL MENTAL
HEALTH FACILITY,**

Defendant.

MEMORANDUM AND ORDER

Plaintiff Justin D. Pierce is a prisoner currently incarcerated at Lansing Correctional Facility in Lansing, Kansas. He initially filed this § 1983 action and a motion for leave to proceed in forma pauperis (Doc. 1) in the United States District Court for the District of Utah, which ordered the matter transferred to this Court on December 7, 2022. (Doc. 3.)

On December 8, 2022, this Court mailed to Plaintiff a notice of deficiency (NOD), informing Plaintiff that under Local Rule 9.1, he was required to re-submit his complaint and his motion to proceed in forma pauperis on court-approved forms within 30 days. (Doc. 5.) On January 4, 2023, the Court received by mail the required documents on the court-approved forms, but returned them to Plaintiff, explaining that he is incarcerated in a facility with mandatory electronic filing and he must follow the instructions available at Lansing Correctional Facility for electronically transmitting pleadings to the Court.

It has now been 13 days since the Court returned Plaintiff's documents and more than a week has passed since the deadline for submitting the complaint and motion to proceed in forma

pauperis on court-approved forms. Plaintiff has failed to electronically file the required documents or file anything further in this matter.

Rule 41(b) of the Federal Rules of Civil Procedure “authorizes a district court, upon a defendant’s motion, to order the dismissal of an action for failure to prosecute or for failure to comply with the Federal Rules of Civil Procedure or ‘a court order.’” *Young v. U.S.*, 316 F. App’x 764, 771 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)). “This rule has been interpreted as permitting district courts to dismiss actions *sua sponte* when one of these conditions is met.” *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)). “In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action *without prejudice* under Rule 41(b).” *Young*, 316 F. App’x at 771–72 (citations omitted).

The time in which Plaintiff was required to re-submit the complaint and motion to proceed in forma pauperis on court-approved forms has passed without Plaintiff doing so. As a consequence, the Court could dismiss this action without prejudice pursuant to Rule 41(b) for failure to comply with a court order. In an abundance of caution, the Court will allow Plaintiff an additional 14 days in which to electronically re-submit his complaint and motion to proceed in forma pauperis, along with the required supporting documentation. If Plaintiff fails to timely and properly submit a complaint on court-approved forms or if he fails to timely either submit a motion for leave to proceed in forma pauperis or pay the filing fee, this matter will be dismissed under Rule 41(b) without further prior notice to Plaintiff. The motion for leave to proceed in forma pauperis that was transferred from the United States District Court for the District of Utah (Doc. 1) is denied without prejudice because it is not on court-approved forms.

IT IS THEREFORE BY THE COURT ORDERED that the motion for leave to proceed in forma pauperis (Doc. 1) is **denied without prejudice**. Plaintiff is given to and including **January 31, 2023** to re-submit his complaint on court-approved forms and to either pay the full filing fee or submit a motion for leave to proceed in forma pauperis on court-approved forms. If he fails to do so, this matter will be dismissed without further prior notice to Plaintiff. The clerk is directed to send the appropriate forms to Plaintiff.

IT IS SO ORDERED.

Dated on this 17th day of January, 2023, in Kansas City, Kansas.

s/ John W. Lungstrum
JOHN W. LUNGSTRUM
United States District Judge