

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

LARRY MARTINEZ,

Plaintiff,

vs.

Civ. No. 18-41 MV/GJF

BETTY JUDD, et al.,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte*. Plaintiff Larry Martinez is an incarcerated prisoner. He filed a Prisoner's Civil Rights Complaint on January 12, 2018. ECF No. 1. At the time he filed his Complaint, Martinez did not pay the filing fee or submit an application to proceed *in forma pauperis*. The Court issued an Order to Cure Deficiency on January 15, 2018, ordering Martinez to either pay the filing fee or submit an application to proceed under 28 U.S.C. § 1915 within thirty days of entry of the Order. ECF No. 2. Martinez submitted the application to proceed under § 1915 on January 25, 2018. ECF No. 4.

The Court granted the application to proceed *in forma pauperis* on January 26, 2018. ECF No. 5. The Court also required Plaintiff Martinez to make an initial partial payment of \$23.17 or show cause why he should not be required to make the payment within 30 days of entry of the Order. ECF No. 5 at 1. More than 30 days has elapsed since entry of the Order and Plaintiff Martinez has not paid the \$23.17 initial partial payment or shown cause why he should be relieved of the obligation to pay.

When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

"The court **shall** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account;

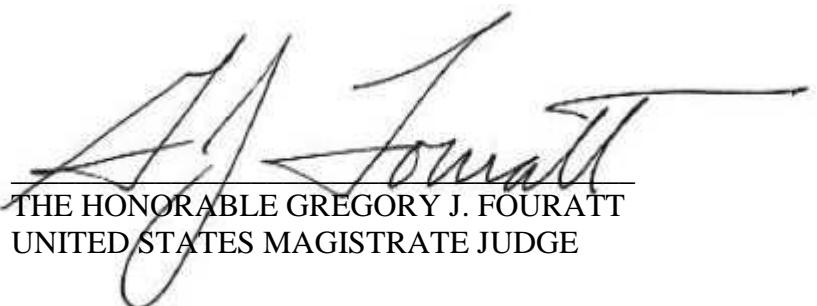
or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

28 U.S.C. § 1915(b)(1) (emphasis added). Plaintiff Martinez was ordered to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused, but has failed to comply with the Court's Order.

The Court may dismiss an action under Federal Rule of Civil Procedure 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will require Plaintiff Martinez to show cause, within 30 days of entry of this Order, why this action should not be dismissed for non-compliance with the Court's January 26, 2018 Order. Failure to show cause or otherwise respond to this Order may result in dismissal of this case without further notice.

IT IS ORDERED that Plaintiff Larry Martinez show cause, within 30 days of entry of this Order, why this case should not be dismissed for failure to comply with the Court's January 26, 2018 Order.

IT IS SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE