

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

JUSTIN D. PIERCE,

Plaintiff,

v.

CASE NO. 22-3300-JWL

**LARNED CORRECTIONAL MENTAL
HEALTH FACILITY,**

Defendant.

MEMORANDUM AND ORDER

Plaintiff Justin D. Pierce is a prisoner currently incarcerated at Lansing Correctional Facility (LCF) in Lansing, Kansas. He initially filed this *pro se* 42 U.S.C. § 1983 action in the United States District Court for the District of Utah, which subsequently transferred it to this Court. (Docs. 1-3.) On December 8, 2022, after the transfer, this Court mailed to Plaintiff a notice of deficiency (NOD) informing him that he was given 30 days in which to comply with Local Rule 9.1 by re-submitting his complaint and his motion to proceed in forma pauperis on court-approved forms. (Doc. 5.) On January 4, 2023, the Court received by mail the required documents, but returned them to Plaintiff because he is incarcerated in a facility with mandatory electronic filing. Thus, Plaintiff was required to transmit the documents electronically from LCF.

Plaintiff did not do so. Thus, on January 17, 2023, the Court issued an order noting the history detailed above and further noting that over a week had passed since the deadline for submission of the required documents. (Doc. 6.) Because Plaintiff had attempted to submit the documents, albeit by mail instead of through the required electronic transmission, the Court allowed Plaintiff until January 31, 2023 in which to properly submit a complaint on court-approved forms

and to either pay the filing fee or properly submit a motion to proceed in forma pauperis on court-approved forms. That deadline has now passed. Plaintiff has filed nothing further in this case.

Under Rule 41(b) of the Federal Rules of Civil Procedure, a district court may dismiss an action “if the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b); *See also Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (noting that Rule 41(b) “has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure . . . to comply with the . . . court’s orders”). In this matter, the Court ordered Plaintiff to resubmit his complaint and motion to proceed in forma pauperis on court-approved forms, as required by local rules. The initial deadline to do so was January 7, 2023 and the Court extended that deadline to January 31, 2023. Yet Plaintiff has failed to comply. The Court therefore concludes that this matter should be dismissed without prejudice under Rule 41(b).

IT IS THEREFORE ORDERED that this matter is **dismissed without prejudice** for failure to prosecute and failure to comply with a court order pursuant to Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

DATED: This 6th day of February, 2023, at Kansas City, Kansas.

S/ John W. Lungstrum

JOHN W. LUNGSTRUM
United States District Judge