

FILED
 UNITED STATES DISTRICT COURT
 DENVER, COLORADO

FEB 10 2009

GREGORY C. LANGHAM
 CLERK

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLORADO

Civil Action No. '09 - CV - 00273 BNB
 (The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JIMMY JOSEPH PACHECO,

Plaintiff,

v.

JOHN W. SUTHERS, Attorney General for the State of Colorado,

Defendant.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
 DIRECTING PLAINTIFF TO CURE DEFICIENCIES**

Plaintiff has submitted to the court a cover letter, a "Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in this Notice of Constitutional Question," and a document titled "Notice of Constitutional Question." As part of the court's review pursuant to D.C.COLO.LCivR 8.2, the court has determined that the documents are deficient as described in this order. In particular, Plaintiff has failed to file a pleading. It appears that Plaintiff currently is challenging the validity of his state court criminal conviction in the Colorado state courts and that he seeks to challenge the constitutional validity of a Colorado state statute in this court. However, Plaintiff may not raise an abstract challenge to the constitutional validity of a state statute in this court. He must file a pleading. Notwithstanding this deficiency, the clerk of the court will be directed to commence a civil action. Plaintiff will be directed to cure

the following if he wishes to pursue his claims in this action. 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
- (4) is missing required financial information
- (5) is missing an original signature by the prisoner
- (6) is not on proper form (must use the court's current form)
- (7) names in caption do not match names in caption of complaint, petition or habeas application
- (8) An original and a copy have not been received by the court. Only an original has been received.
- (9) other: _____

Complaint, Petition or Application:

- (10) is not submitted
- (11) is not on proper form (must use the court's current form)
- (12) is missing an original signature by the prisoner
- (13) is missing page nos. ____
- (14) uses et al. instead of listing all parties in caption
- (15) An original and a copy have not been received by the court. Only an original has been received.
- (16) Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) names in caption do not match names in text
- (18) other _____

Accordingly, it is

ORDERED that the clerk of the court commence a civil action in this matter. It is

FURTHER ORDERED that Plaintiff cure the deficiencies designated above **within thirty (30) days from the date of this order.** Any papers that Plaintiff files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the court mail to Plaintiff, together with a copy of this order, two copies of the following forms: Prisoner's Motion and Affidavit for

Leave to Proceed Pursuant to 28 U.S.C. § 1915; Prisoner Complaint. It is

FURTHER ORDERED that, if Plaintiff fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 6th day of February, 2009.

BY THE COURT:



BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. '09 - CV - 00273

Jimmy Joseph Pacheco
Prisoner No. 122333
CMC-ACC
P.O. Box 300
Cañon City, CO 81215-0300

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and the Prisoner Complaint forms** to the above-named individuals on 2/10/09

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk