

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00377-WYD-CBS

ELDEN KANZLER,
Plaintiff,

v.

DR. MCLAUGHLIN,
DR. DEGROOTE, and
SHERYL SMITH,
Defendants.

ORDER

Magistrate Judge Craig B. Shaffer

Pursuant to the Order of Reference dated June 2, 2009 (doc. # 16) and the memorandum dated June 19, 2009 (doc. # 19), this civil action is before the court on the “Motion to Dismiss or, in the Alternative, Motion for Summary Judgment” filed by Defendants DeGroote and Smith on June 19, 2009 (doc. # 18). Mr. Kanzler’s response to Defendants’ Motion was due on July 20, 2009. (See doc. # 21 (Order setting deadline for Mr. Kanzler’s response)).

On July 20, 2009, Mr. Kanzler did not file a response to Defendants’ Motion. Rather, he tendered a second amended Prisoner Complaint (doc. # 23) without filing a motion seeking leave to amend his current Amended Prisoner Complaint (doc. # 8). In his tendered second amended Prisoner Complaint, Mr. Kanzler eliminated Defendant Sheryl Smith from the case.

Because Mr. Kanzler has already amended his original Prisoner Complaint once (see doc. # 8 (Amended Prisoner Complaint)), he may now amend his “pleading only

with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Because Mr. Kanzler did not file a written consent of the opposing parties or a motion seeking the court's leave to amend his complaint, the tendered second amended Prisoner Complaint has not been accepted by the court.

The deadline for Mr. Kanzler to file a response to Defendants' Motion has passed. Nevertheless, the court will provide Mr. Kanzler one additional opportunity to respond to Defendants' Motion. Accordingly, IT IS ORDERED that:

1. **On or before August 31, 2009**, Mr. Kanzler shall file his response to Defendants' "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment" (filed June 19, 2009) (doc. # 18).
2. In the alternative, **on or before August 31, 2009**, Mr. Kanzler shall file a motion seeking the court's leave to amend his Amended Prisoner Complaint and a copy of his proposed second amended Prisoner Complaint.
3. In either his response or his motion seeking the court's leave to amend his Amended Prisoner Complaint, Mr. Kanzler shall clarify whether or not he still intends to sue Defendant Sheryl Smith.

DATED at Denver, Colorado this 7th day of August, 2009.

BY THE COURT:

s/ Craig B. Shaffer
United States Magistrate Judge