

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-00945-PAB-BNB

WILLIAM GIVENS,

Plaintiff,

v.

JAMES LANDER,  
JACKIE JONES, and  
GARY TORREZ,

Defendants.

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**ORDER**

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This matter arises on a paper filed by the plaintiff titled **Plaintiff's Answer to Defendant's [sic] Summary Judgment and Plaintiff's Motion for Summary Judgment** [Doc. # 44, filed 02/24/2010] (the "Paper"). The Paper is STRICKEN.

The Paper contains both a motion for summary judgment and a response to the defendants' motion for summary judgment. The dispositive motion deadline was January 18, 2010 [Doc. #38]. The plaintiff has not sought to modify the Scheduling Order to extend the deadline, nor has he shown good cause for an extension. Therefore, he may not file a motion for summary judgment out of time.

Moreover, under the local rules of this Court, "[a] cross motion for summary judgment shall not be included in a response brief. A cross motion shall be made in a separate motion . . . ." D.C.COLO.LCivR 56.1B.

Finally, I note that the plaintiff's response to the defendants' summary judgment motion

was due on or before Friday, February 19, 2010 [Doc. #42]. The plaintiff certifies that he placed the Paper in the inmates' legal mail system on Monday, February 22, 2010. *Motion*, p. 7.

Therefore, even applying the mailbox rule to the Paper,<sup>1</sup> his response to the defendants' summary judgment motion is untimely. Nevertheless, I will allow the plaintiff an extension of time to respond to the defendants' motion. Accordingly,

IT IS ORDERED that the Paper is STRICKEN.

IT IS FURTHER ORDERED that the plaintiff shall file a response to the defendants' motion for summary judgment on or before **March 25, 2010**.

Dated March 1, 2010.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

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<sup>1</sup>Under the mailbox rule, "an inmate who places a federal civil rights complaint in the prison's internal mail system will be treated as having 'filed' that complaint on the date it is given to prison authorities for mailing to the court." *Id.* at 1165. However, the inmate must establish actual use of the prison's internal mail system in order to be accorded the benefits of the mailbox rule. *Id.*