

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

Civil Action No. 09-cv-01190-REB-BNB

JOHN J. POWERS,

Plaintiff,

v.

PETE HAUTZINGER, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Defendants.

---

**ORDER**

---

This matter arises on the plaintiff's **Request Court Take Judicial Notice: Plaintiff Has Not Been Served a Copy of Defendant's Motions** [Doc. #56], filed 01/14/2010] (the "Motion"). The Motion is DENIED as specified.

The plaintiff "advises" the court that he has not been served with copies of the defendants' motions to dismiss and, therefore, "can not possibly respond to said motions by 02/08/2010, as ordered by this Court on 1/7/2010." The plaintiff requests that the defendants be ordered to "immediately serve him with a copy of their motions to dismiss [sic]" at the Fort Lyons Correctional Facility, Building. 5, P.O. Box 1,000, Ft. Lyon, CO, 81038.

On November 9, 2009, defendant Hautzinger filed a motion to dismiss [Doc. #36]. Counsel for the defendant certifies that he served the motion on the plaintiff at his address of record at the Mesa County Detention Center on November 9, 2009. On December 14, 2009, defendant Attorney General of the State of Colorado filed its motion to dismiss [Doc. #47]. The defendant certified that a copy of the motion was served on the plaintiff at his address of record

at the Mesa County Detention Center on December 14, 2009.

On December 10, 2009, I issued an order wherein I noted that the court had mailed the plaintiff several papers at his address of record at the Mesa County Detention Center, and all of the mail had been returned as undeliverable because the plaintiff was no longer at that address [Doc. #46]. I further noted that the plaintiff's last filing in this case was received on October 16, 2009, and the Court had not received a notice of change of address from him as required by D.C.COLO.LCivR 10.1M. I ordered the plaintiff to show cause in writing, on or before December 28, 2009, why the Complaint should not be dismissed for failure to keep the Court informed of his current address in violation of D.C.COLO.LCivR 10.1M, and for failure to prosecute pursuant to D.C.COLO.LCivR 41.1. I cautioned the plaintiff that his failure to respond to my order on or before December 28, 2009, would result in my recommendation that the Complaint be dismissed in its entirety. The plaintiff did not respond to my order to show cause.

The plaintiff filed a change of address on December 31, 2009 [Doc. #50]. Rather than requesting copies of papers he has not received and requesting an extension of time to respond to the defendants' motions, the plaintiff accuses the defendants of failing to serve the motions and is demanding that they be ordered to "immediately serve him with a copy of their motions" at his new address. The plaintiff's accusations are disingenuous.

The plaintiff's unacceptable behavior notwithstanding, it appears that he was transferred to three institutions from the Mesa County Detention Center before he was placed at the Fort Lyons Correctional Facility [Doc. #50], thus creating difficulties in filing a proper change of address with the court. Accordingly,

IT IS ORDERED that on or before **February 16, 2010**, the defendants shall re-serve their motions to dismiss on the plaintiff at his new address of record.

IT IS FURTHER ORDERED that the plaintiff shall respond to the motions on or before **March 16, 2010**.

IT IS FURTHER ORDERED that the plaintiff shall notify the court in writing of any future change of address within five days after such change in accordance with D.C.COLO.LCivR 10.1M.

IT IS FURTHER ORDERED that the plaintiff's failure to comply with this order may result in sanctions, including dismissal of this case.

Dated February 3, 2010.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge