

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01202-BNB

LEO SIMMONS,

Plaintiff,

v.

H. BRILL, Warden,
PHILLIPS, Chairperson,
MINDEE MITCHELL,
ANGELA MORELAND,
MERCHANT, C/O,
FRAZIER, C/O, and
DOWD, C/O, and
DELGADO, C/O,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 23 2010

GREGORY C. LANGHAM
CLERK

ORDER TO DISMISS IN PART AND TO DRAW CASE
TO A DISTRICT JUDGE AND TO A MAGISTRATE JUDGE

On January 11, 2010, the Court denied in part Plaintiff Leo Simmons' request to proceed pursuant to 28 U.S.C. § 1915. The Court found that Mr. Simmons is subject to filing restrictions under 28 U.S.C. § 1915(g) and that two of the three claims raised in the Prisoner Complaint (Claims One and Three) fail to state that he is in imminent danger of serious physical injury. The Court instructed Mr. Simmons to pay the entire \$350.00 filing fee within thirty days if he wished to pursue Claims One and Three in this action. The Court warned Mr. Simmons that if he failed to pay the filing fee within thirty days Claims One and Three would be dismissed.

Mr. Simmons now has failed to pay the filing fee in full within the time allowed. Claims One and Three will be dismissed. Claim Two, which includes medical treatment

claims, will be drawn to a district judge and to a magistrate judge. Because Mr. Simmons only asserts medical treatment violations against named Defendants Merchant, Frazier, and Dowd, the remaining Defendants--H. Brill, Phillips, Mindee Mitchell, Angela Moreland, and Delgado--will be dismissed from the action. Accordingly, it is

ORDERED that Claims One and Three are dismissed without prejudice because Mr. Simmons failed to pay the \$350.00 filing fee in full within the time allowed. It is

FURTHER ORDERED that Defendants H. Brill, Phillips, Mindee Mitchell, Angela Moreland, and Delgado are dismissed from the action. It is

FURTHER ORDERED that the Clerk of the Court shall remove Defendants H. Brill, Phillips, Mindee Mitchell, Angela Moreland, and Delgado from the docketing record as parties to this action. It is

FURTHER ORDERED that Claim Two and the action shall be drawn to a district judge and to a magistrate judge. It is

FURTHER ORDERED that Mr. Simmons may proceed in this action without payment of an initial partial filing fee. Mr. Simmons remains obligated to pay the full amount of the required \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b)(1) regardless of the outcome of this action. It is

FURTHER ORDERED that, until the \$350.00 filing fee is paid in full, Mr. Simmons shall make monthly payments to the Court of twenty percent of the preceding month's income credited to his account or show cause why he has no assets and no means by which to make each monthly payment. Mr. Simmons is directed to make the necessary arrangements to have the monthly payments identified by the civil action

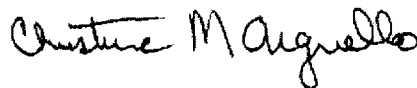
number on this Order. Mr. Simmons must file a current certified copy of his trust fund account statement to show cause. It is

FURTHER ORDERED that if Mr. Simmons fails to have the appropriate monthly payment sent to the Clerk of the Court each month or to show cause each month, as directed above, why he has no assets and no means by which to make the monthly payment the Complaint may be dismissed without further notice. It is

FURTHER ORDERED that the Court may dismiss this action and may apply all or part of the filing fee payments tendered in this action to satisfy any filing fee debt Plaintiff may owe in a prior action or actions if Plaintiff fails to stay current with his payment obligations in the prior action or actions.

DATED at Denver, Colorado, this 22nd day of March, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-01202-BNB

Leo Simmons
Prisoner No. 62094
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 3/22/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk