

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01703-WYD-MEH

JOHNNY EDWARDS,

Plaintiff,

v.

LUCY HERNANDEZ, individual and official capacity,  
JUDY BRIZENDINE, individual and official capacity,  
LAURIE KNAPP, individual and official capacity, and  
DOCTOR CALBING, individual and official capacity,

Defendants.

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**ORDER DIRECTING PLAINTIFF TO SUBMIT AMENDED MOTION  
FOR LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915**

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**Michael E. Hegarty, United States Magistrate Judge.**

At the time Plaintiff initiated the instant action, he was in the custody of the Colorado Department of Corrections and was incarcerated at the Crowley County Correctional Facility in Olney Springs, Colorado. (Docket #3 at 2.) After mail sent to Plaintiff's correctional facility address was returned, the Court resent mail to Plaintiff at an address in Denver, Colorado, which is now the correct address on the docket, indicating he is no longer incarcerated. (Dockets ##24, 28.)

Plaintiff's continuing obligation to pay the filing fee is to be determined, like any nonprisoner, solely on the basis of whether he qualifies for *in forma pauperis* status. See *Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997). See also *McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996). Therefore, Plaintiff is ordered to submit an Amended Motion and Affidavit for Leave to Proceed

Pursuant to 28 U.S.C. § 1915. Alternatively, Plaintiff may elect to pay the \$350.00 filing fee to pursue this action. Accordingly, it is

ORDERED that Plaintiff submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on or before **February 1, 2010**, or alternatively, Plaintiff may elect to pay the \$350.00 filing fee to pursue this action on or before **February 1, 2010**. It is

FURTHER ORDERED that the Clerk of the Court shall mail to Plaintiff, together with a copy of this Order, a copy of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form, used by nonprisoners in submitting requests to proceed pursuant to § 1915. It is

FURTHER ORDERED that if Plaintiff fails to comply with the instant Order on or before **February 1, 2010**, the Complaint and action may be dismissed without further notice.

Dated at Denver, Colorado, this 6th day of January, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Michael E. Hegarty". The signature is written in a cursive style with a large initial "M".

Michael E. Hegarty  
United States Magistrate Judge