

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02020-BNB

JERALENE A. MARISCO,

Applicant,

v.

UNITED STATES DISTRICT COURT,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 21 2009
GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTIONS

Applicant initiated this action by filing *pro se* two untitled documents apparently seeking judicial relief that were docketed as motions for relief. In an order filed on August 26, 2009, Magistrate Judge Boyd N. Boland entered an order directing Applicant to cure certain deficiencies if she wishes to pursue her claims. On September 29, 2009, Applicant filed two different versions of a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and two different versions of an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. The motions for relief filed on August 26, 2009, will be denied as moot because Applicant has filed a pleading on the proper form. For the reasons stated below, Applicant will be denied leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

Section 1915(a)(1) allows a litigant to commence a lawsuit without prepayment of fees or security therefor. However, "[t]here is no absolute right to proceed in court

without paying a filing fee in civil matters.” *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988) (per curiam); **see also** 28 U.S.C. § 1914(a). Proceeding *in forma pauperis* pursuant to § 1915, *i.e.* without paying a filing fee under § 1914, is a privilege extended to individuals unable to pay such a fee. **See Holmes**, 852 F.2d at 153.

Although Applicant has not submitted a certificate from her custodian as to the amount of money in her prison account, she alleges that she has \$51.00 in that account. Therefore, the Court finds that Applicant has sufficient assets to pay the \$5.00 filing fee and does not qualify to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. She will be directed to pay the \$5.00 filing fee required pursuant to 28 U.S.C. § 1914 if she wishes to pursue her claims in this action. Accordingly, it is

ORDERED that the motions for relief filed on August 26, 2009, are denied as moot. It is


FURTHER ORDERED that both motions seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 filed on September 29, 2009, are denied. It is

FURTHER ORDERED that Applicant pay the full \$5.00 filing fee **within thirty (30) days from the date of this order** if she wishes to pursue her claims in this action. It is

FURTHER ORDERED that if Applicant fails to pay the full \$5.00 filing fee within the time allowed, the action will be dismissed without prejudice and without further notice.

DATED at Denver, Colorado, this 20 day of Oct, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

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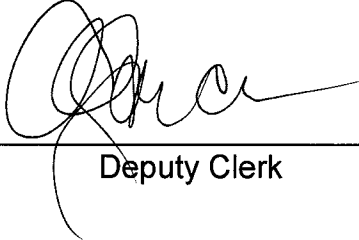
CERTIFICATE OF MAILING

Civil Action No. 09-cv-02020-BNB

Jeralene A. Marisco
Prisoner No. 118532
12144 W. Nevada Dr. #1
Lakewood, CO 80228

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/21/09

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk