

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02199-BNB

MICHAEL CORBELLO, and
ALBERT REYNOLDS,

Plaintiffs,

v.

BUREAU OF PRISONS, North Central Region,
WARDEN REVILLE,
CAPT. HARMON,
SIA VANIC,
LT. HENDERSON,
M. BARKER, Unit Manager,
MS. WILNER, Unit Manager, and
COUNSELOR SAMS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 03 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiffs, two prisoners in the custody of the United States Bureau of Prisons, initiated this action by filing *pro se* a joint complaint alleging that their rights under the United States Constitution have been violated. On October 21, 2009, Plaintiffs filed their second amended complaint. On November 16, 2009, Magistrate Judge Boyd N. Boland ordered Plaintiffs to file a third amended complaint that clarifies both who is being sued and specifically how each named Defendant personally participated in the asserted constitutional violations. Plaintiffs were warned that the action would be dismissed without further notice if they failed to file a joint third amended complaint within thirty days.

On December 1, 2009, the copy of Magistrate Judge Boland's November 16 order that was mailed to Plaintiff Albert Reynolds at the prison address he provided was returned to the Court undelivered. On December 14, 2009, Plaintiff Michael Corbello filed a motion for an extension of time in which he advised the Court that Mr. Reynolds had been transferred to another prison. On December 15, 2009, Magistrate Judge Boland entered a minute order granting Mr. Corbello's motion for an extension of time and allowing Plaintiffs until January 13, 2010, to file a third amended complaint as directed. Even though Mr. Reynolds has not filed a notice of change of address as required by the Court's local rules, the copy of Magistrate Judge Boland's December 15 minute order that was mailed to Mr. Reynolds at the same prison address has not been returned to the Court undelivered.

Plaintiffs have failed to file a third amended complaint within the time allowed. Therefore, the action will be dismissed without prejudice for failure to file a third amended complaint as directed.


The Court also will dismiss this action because Plaintiffs have failed to make the required monthly filing fee payments. In an order filed on October 26, 2009, Magistrate Judge Boland granted Plaintiffs leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and allowed Mr. Corbello to proceed without payment of an initial partial filing fee. In an order filed on November 13, 2009, Mr. Reynolds also was allowed to proceed without payment of an initial partial filing fee. Pursuant to § 1915(b)(1), both Plaintiffs were ordered to make installment payments until the full \$350.00 filing fee was paid. Pursuant to § 1915(b)(2), Plaintiffs are required to make "monthly payments of 20 percent of the preceding month's income credited to [their] account[s]" until the filing fee

is paid in full. Plaintiffs were instructed either to make the required monthly payments or to show cause each month why they have no assets and no means by which to make a monthly payment. In order to show cause, Plaintiffs were directed to file a current certified copy of their inmate trust fund account statements. Plaintiffs were warned that a failure to comply with the requirements of § 1915(b)(2) would result in the dismissal of this action without further notice. Despite this warning, Plaintiffs have failed to make any monthly filing fee payments or to show cause why they have no assets and no means by which to make the required monthly filing fee payments. Accordingly, it is

ORDERED that the complaint, the amended complaint, the second amended complaint, and the action are dismissed without prejudice for failure to file a third amended complaint as directed and for failure to make the required monthly filing fee payments.

DATED at Denver, Colorado, this 2nd day of February, 2010.

BY THE COURT:



PHILIP A. BRIMMER
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-02199-BNB

Michael Corbello
Reg No. 12702-078
US Penitentiary Florence
P.O. Box 7000
Florence, CO 81226

Albert Reynolds
Reg No. 31647-074
US Penitentiary Florence
P.O. Box 7000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 2/3/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk