

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 14 2009

GREGORY C. LANGHAM
CLERKIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

09CV02432 Bnb

Civil Action No. _____

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JOHN J. McCARTHY,

Petitioner,

v.

WARDEN, FCI Florence,

Respondent.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING PETITIONER TO CURE DEFICIENCIES**

Petitioner has submitted a "Petition for a Writ of Habeas Corpus by a Federal Prisoner" in which he challenges the conditions of his confinement and not the execution of his sentence. He has failed either to pay the filing fee or to file a motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. As part of the court's review pursuant to D.C.COLO.LCivR 8.2, the court has determined that the submitted document is deficient as described in this order. Notwithstanding the deficiencies, the clerk of the court will be directed to commence a civil action. Petitioner will be directed to cure the following if he wishes to pursue his claims. Any papers that Petitioner files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:(1) xx is not submitted

- (2) ___ is missing affidavit
- (3) xx is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) ___ is missing certificate showing current balance in prison account
- (5) ___ is missing required financial information
- (6) ___ is missing an original signature by the prisoner
- (7) ___ is not on proper form
- (8) ___ names in caption do not match names in caption of complaint, petition or habeas application
- (9) ___ An original and a copy have not been received by the court. Only an original has been received.
- (10) xx other: motion is necessary only if filing fee is not paid in advance.

Complaint, Petition or Application:

- (11) ___ is not submitted
- (12) xx is not on proper form (must use the court's current Prisoner Complaint form because claims asserted challenge conditions of confinement and not the execution of a sentence)
- (13) ___ is missing an original signature by the prisoner
- (14) ___ is missing page nos. ___
- (15) ___ uses et al. instead of listing all parties in caption
- (16) ___ An original and a copy have not been received by the court. Only an original has been received.
- (17) ___ Sufficient copies to serve each defendant/respondent have not been received by the court.
- (18) ___ names in caption do not match names in text
- (19) ___ other _____

Accordingly, it is

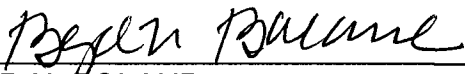
ORDERED that the clerk of the court commence a civil action in this matter. It is FURTHER ORDERED that Petitioner cure the deficiencies designated above **within thirty (30) days from the date of this order.** Any papers that Petitioner files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the court mail to Petitioner, together with a copy of this order, two copies of the following form: Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915; Prisoner Complaint. It is

FURTHER ORDERED that, if Petitioner fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 14th day of October, 2009.

BY THE COURT:



BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. **09CV02432**

John J. McCarthy
Reg. No. 38051-066
FCI - Florence
P.O. Box 6000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and Prisoner Complaint forms** to the above-named individuals on 10/14/09

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk