

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02529-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FREDERICK W. BAUER, # 02706-090,

NOV 25 2009

Applicant,

GREGORY C. LANGHAM
CLERK

v.

U.S. ATTORNEY GENERAL ["Sentenced to the 'Custody' of the"],

Respondent.

ORDER OVERRULING OBJECTION

This matter is before the Court on the pleading titled, "Appeal With Motion for Show Cause Order" that Mr. Bauer, a federal prisoner housed in the State of Colorado, filed with the Court on November 9, 2009. In the Appeal, Mr. Bauer objects to Magistrate Judge Boyd N. Boland's October 27, 2009, Order that instructs Mr. Bauer to submit a certified account statement, to submit his request to proceed without payment of a filing fee on a proper Court-approved form, and to submit Page Five of the Court-approved 28 U.S.C. § 2241 form. The Court will construe the Appeal liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons stated below, the Objection will be overruled.

Pursuant to 28 U.S.C. § 636(b)(1)(A), a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. For the most part,

Mr. Bauer's claims in the Objection are nonresponsive to the October 27, 2009, Order and simply include arguments challenging the constitutionality of his incarceration. To the extent Mr. Bauer challenges Magistrate Judge Boland's authority to enter the October 27, 2009, Order, under D.C.COLO.LCivR 72.1, this Court has designated to a magistrate judge the authority to "make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis*." Therefore, Magistrate Judge Boland has proper authority to preside over the initial review of this Application.

Mr. Bauer further sets forth incorrect statements regarding the instructions included in the October 27, 2009, Order. First, Magistrate Judge Boland did not state that Mr. Bauer had filed his § 2241 Application on an improper form. Mr. Bauer was directed to provide Page Five of the § 2241 form, which was not included with the Application. Second, Magistrate Judge Boland did not state that Mr. Bauer had filed a 28 U.S.C. § 1915 Motion and Affidavit as Mr. Bauer claims. Mr. Bauer filed a self-styled "Motion to Proceed Without Payment" Mr. Bauer argues, however, that he is not required to file a § 1915 motion, because the Prisoner's Litigation Reform Act (PLRA) does not apply to habeas actions. Again, Mr. Bauer is incorrect.

If Mr. Bauer seeks to proceed without payment of the filing fee, under Rule 3(a)(2) of the Rules Governing Section 2254 Cases in the United States District Courts, he is required to submit a motion for leave to proceed in forma pauperis, the affidavit required by 28 U.S.C. § 1915, and a certificate from the warden or other appropriate officer of the place of his confinement showing the current amount of money in his inmate account. The Rules Governing Section 2254 Cases apply to § 2241 actions. **See** Rules Governing Section 2254 Cases, Rule 1(b). Also, in accordance with the

United States District Court for the District of Colorado Local Rules of Practice, Local Rule 8.2 A., a *pro se* prisoner is required to use the forms established by this Court to file an action.

Finally, with respect to Mr. Bauer's request that this Court consolidate this action with the action he filed in the United States District Court for the District of Columbia, the request is denied.

The Court concludes that Magistrate Judge Boland's October 27, 2009, Order neither is clearly erroneous nor contrary to law. Mr. Bauer's Appeal borders on being abusive and a flagrant disregard for the Court's Local Rules. Therefore, Mr. Bauer's liberally construed Objection will be overruled.

Mr. Bauer is instructed to comply with the October 27, 2009, Order or the action will be dismissed for failure to cure the deficiencies. Mr. Bauer is directed to complete and return to the Court the Court-approved forms sent to him with the October 27, 2009, Order and to submit a certified account statement showing the current amount in his inmate account if he desires to proceed with the instant action in this Court. Accordingly, it is

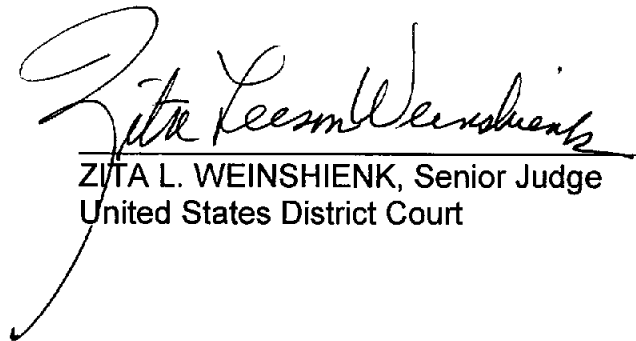
ORDERED that Mr. Bauer's Appeal with Motion for Show Cause Order (Doc. No. 5), filed on November 9, 2009, is construed liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A) and is overruled. It is

FURTHER ORDERED that Mr. Bauer has **twenty days from the date of this Order** to comply with the October 27, 2009, Order. It is

FURTHER ORDERED that if Mr. Bauer fails to comply with the October 27, 2009, Order, as directed, the action will be dismissed without further notice.

DATED at Denver, Colorado, this 25 day of November, 2009.

BY THE COURT:



ZITA L. 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-02529-BNB

Frederick W. Bauer
Reg No. 02706-090
FCI - Englewood
9595 W. Quincy Ave
Littleton, CO 80123

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/25/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk