

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO, FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

Civil Action No. 09-cv-02623-BNB

MAY 05 2010

EDWARD D. SWANK,

GREGORY C. LANGHAM  
CLERK

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,  
KEVIN MILYARD,  
BEVERLY DOWIS,  
DR. BARRY GOLDSMITH,  
P.A. BRIAN WEBSTER, and  
JOSEPH FORTUNATO,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, Edward D. Swank, is in the custody of the Colorado Department of Corrections and is incarcerated at the Sterling Correctional Facility in Sterling, Colorado. Mr. Swank initiated this action by filing a *pro se* Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. Magistrate Judge Boyd N. Boland granted Mr. Swank leave to proceed pursuant to § 1915 without payment of an initial partial filing fee by order dated January 14, 2010.

On January 15, 2010, Magistrate Judge Boland ordered Mr. Swank to file an amended complaint that included proper parties and alleged the personal participation of each named defendant. After receiving an extension of time, Mr. Swank filed an amended complaint on March 25, 2010.

On March 29, 2010, Magistrate Judge Boland determined that Mr. Swank's amended complaint was deficient because it again failed to allege the personal participation of all named defendants. Magistrate Judge Boland noted that three of Mr. Swank's claims were not asserted against any defendant and that Mr. Swank had failed to include any allegations demonstrating how two of the defendants personally participated in the asserted claims. Therefore, Mr. Swank was ordered to file a second amended complaint on the court-approved form that alleged the personal participation of all named defendants. Mr. Swank was warned that the action would be dismissed without further notice if he failed to file an amended pleading within thirty days.

On April 12, 2010, Mr. Swank filed a letter and a pleading titled "Addendum to Ammended [sic] Prisoner Complaint." In the letter, Mr. Swank noted that he had been directed to file a Second Amended Complaint and requested that his "Addendum" be incorporated into his Amended Complaint. Mr. Swank also requested that the Court clarify its Order for a Second Amended Complaint. By minute order dated April 14, 2010, Magistrate Judge Boland cautioned Mr. Swank that he could not cure the deficiencies in his Amended Complaint by filing an "Addendum." Magistrate Judge Boland again directed Mr. Swank to file a Second Amended Complaint that alleged the personal participation of the named defendants and clearly and concisely set forth his claims for relief. Magistrate Judge Boland also warned Mr. Swank that his failure to comply with the directives of the March 29 Order for a Second Amended Complaint would result in the dismissal of his action without further notice.

On May 3, 2010, Mr. Swank filed a "Second Ammended [sic] Complaint." The Second Amended Complaint, however, is not on the court-approved form and does not

assert any claims for relief. Instead, Mr. Swank requests that the Court “add to the original complaint this ammendment [sic].” It appears that Mr. Swank is again attempting to cure the deficiencies set forth in the March 29 Order for a Second Amended Complaint by filing additional documents and requesting that they be attached to the Amended Complaint. However, on April 14, 2010, Magistrate Judge Boland explicitly directed Mr. Swank that he may not cure the deficiencies in his Amended Complaint by submitting additional documents to the Court. Instead, Mr. Swank was directed to file, on the court-approved form, a complete second amended complaint that alleged the personal participation of all named defendants and that clearly and concisely set forth his claims for relief. Mr. Swank has now failed to comply with the Court’s March 29 Order for a Second Amended Complaint. Therefore, the Second Amended Complaint and action will be dismissed without prejudice.

Accordingly, it is

ORDERED that the Second Amended Complaint and this action are dismissed without prejudice for failure to file a proper amended pleading within the time allowed.

DATED at Denver, Colorado, this 4th day of May, 2010.

BY THE COURT:

s/Philip A. Brimmer  
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-02623-BNB

Edward D. Swank  
Prisoner No. 143832  
Sterling Correctional Facility  
PO Box 6000  
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 5/5/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk