

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JAN 15 2010

Civil Action No. _____

10CV00090

BNB

GREGORY C. LANGHAM
CLERK

(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.)

LIONEL KERSH,

Applicant,

v.

WARDEN RICHARD SMELSER, and
JOHN WILLIAM SUTHERS, The Attorney General of the State of [Colorado],

Respondents.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING PLAINTIFF TO CURE DEFICIENCY**

Applicant has submitted a letter to the court, a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. These documents are labeled with Mr. Kersh's current § 1983 civil action case number 09-cv-02621-BNB and were filed in case number 09-cv-02621-BNB on January 5, 2010. The court, however, construes these documents to be a new habeas corpus action and will direct the clerk of the court to commence a new civil action. As part of the court's review pursuant to D.C.COLO.LCivR 8.2, the court has determined that the submitted documents are deficient as described in this order. Notwithstanding the deficiencies, the clerk of the court will be directed to commence a civil action. Applicant will be

directed to cure the following if he wishes to pursue his claims. Any papers which the Applicant files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) ___ is not submitted
- (2) ___ is missing affidavit
- (3) ___ 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 (must use the court's current 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) ___ other: _____.

Complaint, Petition or Application:

- (11) ___ is not submitted
- (12) ___ is not on proper form (must use the court's current form)
- (13) X 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 new civil action with the documents that were filed in case 09-cv-02621-BNB on January 5, 2010 (Document Nos. 6, 7 and 8). It is

FURTHER ORDERED that the Applicant cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers which the Applicant 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 the Applicant, together with a copy of this order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

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

DATED at Denver, Colorado, this 14th day of January, 2010.

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.

10CV00090

Lionel Kersh

Prisoner No. 143312

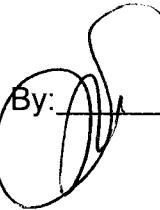
Crowley County Corr. Facility

6564 State Hwy. 96

Olney Springs, CO 81062-8700

I hereby certify that I have mailed **ORDER and two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** to the above-named individuals on 1/15/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk