

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00440-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

RUFUS Q. HIGH HAWK,

Plaintiff,

JUN 29 2010

GREGORY C. LANGHAM
CLERK

v.

DEP'T OF CORRECTIONS,
PEGGY HEIL, SOTMP Director, In her Individual and Official Capacity,
HENRY YBARRA, L.C.S.W.-A.V.C.F. Mental Health, In his Individual and Official
Capacity, and
STEVEN FIELDMAN, D.D.A.-10th Judicial Dist. (Now a 10th Judicial Court Judge), In
his Individual and Official Capacity,

Defendants.

ORDER OF DISMISSAL

At the time Plaintiff Rufus Q. High Hawk initiated the instant action, he was detained at the Pueblo County Jail in Pueblo, Colorado. On March 22, 2010, Plaintiff submitted a Notice of Change of Address to the Court, indicating he no longer is incarcerated.

In an order entered on April 2, 2010, Magistrate Judge Boyd N. Boland instructed Plaintiff that because he no longer is incarcerated he is obligated to pay the filing fee like any nonprisoner, solely on the basis of whether he qualifies for *in forma pauperis* status. **See *Whitney v. New Mexico***, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); **see also *McGore v. Wrigglesworth***, 114 F.3d 601, 612-13 (6th Cir. 1997); ***In re Prison***

Litigation Reform Act, 105 F.3d 1131, 1138-39 (6th Cir. 1997); **McGann v.**

Commissioner, Soc. Sec. Admin., 96 F.3d 28, 29-30 (2^d Cir. 1996).

Magistrate Judge Boland ordered Plaintiff either to submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, or in the alternative to pay the \$350.00 filing fee in full if he desired to pursue his claims in this action. Plaintiff was warned that the action would be dismissed without further notice if he failed to comply with the April 2 Order within the time allowed. The April 2 Order inadvertently was mailed to Plaintiff's prison address and subsequently returned to the Court. On May 7, 2010, the April 2 Order was resent to Plaintiff at his new address and Plaintiff was given an additional thirty days to submit an Amended Motion and Affidavit to the Court.

Nonetheless, Plaintiff now has failed to communicate with the Court, and as a result he has failed to comply with Magistrate Judge Boland's April 2 Order within the time allowed. Accordingly, it is

ORDERED that the Complaint and action are dismissed because Plaintiff failed to comply with the Order entered on April 2, 2010, within the time allowed.

DATED at Denver, Colorado, this 25th day of June, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

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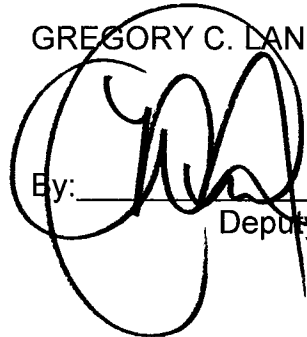
CERTIFICATE OF MAILING

Civil Action No. 10-cv-00440-BNB

Rufus Q. High Hawk
1027 Pine Street
Pueblo, CO 81004

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 6/29/10

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk