

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00902-BNB

TIMOTHY C. ROMERO,

Plaintiff,

v.

ARISTEDES ZAVARAS, Executive Director, C.D.O.C.,
BEVERLY DOWIS, Director, Healthcare of SCF, and
GARY PARDOS, Contractor Health Care at SCF,

Defendants..

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 23 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

At the time he initiated this action, Plaintiff, Timothy C. Romero, was in the custody of the Colorado Department of Corrections (DOC) and was incarcerated at the Sterling Correctional Facility. On April 14, 2010, Mr. Romero submitted to the Court a *pro se* Prisoner Complaint pursuant to 42 U.S.C. § 1983 and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.

On April 22, 2010, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action, and ordered Mr. Romero to cure certain deficiencies. Specifically, he directed Mr. Romero to file a certified copy of his prisoner's trust fund statement for the 6-month period immediately preceding the filing.

Mr. Romero submitted a certified trust fund statement on April 29, 2010. Accordingly, on May 4, 2010, Magistrate Judge Boland entered an order granting Mr. Romero leave to proceed pursuant to 28 U.S.C. § 1915. The May 4 Order required Mr.

Romero to pay the full amount of the \$350.00 filing fee in installments and directed him to pay an initial partial filing fee of \$60.00 within thirty days or to show cause why he had no assets and no means to pay the initial fee by filing a current certified copy of his trust fund account statement. The Order warned Mr. Romero that if he failed to have the initial partial filing fee sent to the Clerk of the Court by the designated deadline or to show cause why he had no assets and no means by which to pay the initial fee the Complaint would be dismissed without further notice.

The initial partial filing fee of \$60.00 was due on June 8, 2010. Mr. Romero paid the initial partial filing fee of \$60.00 on June 9, 2010, one day after it was due. On June 22, 2010, the Court inadvertently entered an order dismissing the action for Mr. Romero's failure to pay the initial partial filing fee of \$60.00 within the time allowed. On June 29, 2010, upon review of the case, it came to the Court's attention that Mr. Romero had paid the initial partial filing fee one day after it was due. Recognizing the delays inherent in the prison mail system, and the difficulties that many prisoners experience in attempting to mail filing fees, the Court found that it was in the interest of justice to vacate the Order of Dismissal and Judgment. Accordingly, the Court ordered the case re-opened.

On July 12, 2010, Mr. Romero filed a Notice of Change of Address. In the Notice, Mr. Romero informed the Court that he had recently been released from the custody of the DOC, and was no longer incarcerated. Accordingly, on July 15, 2010, Magistrate Judge Boland ordered Mr. Romero to file an Amended Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the form used by non-prisoners within thirty days. In addition, Magistrate Judge Boland directed Mr. Romero to file an Amended

Complaint. Mr. Romero was warned that his failure to file an Amended Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and an Amended Complaint within thirty days would result in the dismissal of his action without further notice.

Mr. Romero has now failed to file an Amended Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and an Amended Complaint within the time provided. Further, Mr. Romero has not communicated with the Court since July 12, 2010, and no mail has been returned to the Court as undeliverable. Therefore, the Complaint and action will be dismissed without prejudice. Accordingly, it is

ORDERED that the Complaint and this action are dismissed without prejudice pursuant to Federal Rule of Procedure 41(b) for failure to file an Amended Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and an Amended Complaint within the time allowed.

DATED at Denver, Colorado, this 23rd day of August, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
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

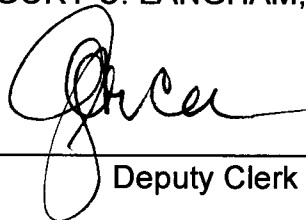
Civil Action No. 10-cv-00902-BNB

Timothy C. Romero
3481 Benton St. #7
Wheatridge, CO 80212

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to
the above-named individuals on 8/23/10

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk