

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01016-BNB

ETHEL WHITE,

Plaintiff,

v.

NURSE (EDITH), D.R.D.C. EMPLOYEE,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 13 2010

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO SUBMIT AMENDED MOTION
FOR LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

At the time Plaintiff, Ethel White, initiated the instant action, she was in the custody of the Colorado Department of Corrections and was incarcerated at the Denver Women's Correctional Facility. On May 5, 2010, the Court entered an order directing the clerk of the Court to commence the instant action and directing Ms. White to cure a deficiency in the case by submitting within thirty days a certified copy of her trust fund account statement for the six-month period immediate preceding this filing. On May 12, 2010, Ms. White submitted a notice of change of address to the Court indicating that she no longer is incarcerated. Therefore, to the extent the May 5 order directed Ms. White to cure the designated deficiency, the order will be waived.

However, Ms. White's continuing obligation to pay the filing fee is to be determined, like any nonprisoner, solely on the basis of whether she 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 (2d Cir. 1996). Therefore, Ms. White will be ordered to submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Alternatively, Ms. White may elect to pay the \$350.00 filing fee to pursue her claims in this action. Accordingly, it is

ORDERED that, to the extent the May 5, 2010, order directed Plaintiff, Ethel White, to submit within thirty days a certified copy of her trust fund account statement for the six-month period immediately preceding this filing, the order is waived. It is

FURTHER ORDERED that within thirty days from the date of this order Ms. White submit to the Court an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Alternatively, Ms. White may elect to pay the \$350.00 filing fee to pursue her claims in this action. It is

FURTHER ORDERED that the clerk of the Court mail to Ms. White, together with a copy of this order, two copies of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form used by nonprisoners in submitting requests to proceed pursuant to § 1915. It is

FURTHER ORDERED that if Ms. White fails to comply with the instant order, within thirty days, the complaint and action will be dismissed without further notice.

DATED at Denver, Colorado, this 13th day of May, 2010.

BY THE COURT:

s/Craig B. Shaffer
Craig B. Shaffer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-01016-BNB

Ethel White
14995 Maxwell Pl.
Denver, CO 80239

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915** to the above-named individuals on 5/13/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk