

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01514-BNB

DANA COOPER,

Plaintiff,

v.

MARIE LEIBA, and
BRIAN WEBSTER,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 29 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Dana Cooper, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. On June 11, 2010, Mr. Cooper initiated this action by filing a Prisoner Complaint. On July 16, 2010, Magistrate Judge Boyd N. Boland granted Mr. Cooper leave to proceed pursuant to 28 U.S.C. § 1915 without payment of an initial partial filing fee. The Court must construe Mr. Cooper's Complaint liberally because he is a **pro se** litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a **pro se** litigant's advocate. *Hall*, 935 F.2d at 1110.

The Court has reviewed the Complaint. The claims Mr. Cooper asserts against Defendants Webster and Leiba are being addressed by the Court in **Cooper v. Archeletta**, No. 08-cv-01599-CMA (D. Colo. Filed July 29, 2008). Therefore, the claims raised in this action are repetitive of the claims Mr. Cooper raised in Case No. 08-cv-01599-CMA. *See* Case No. 08-cv-01599-CMA at Doc. No. 113. Repetitious litigation

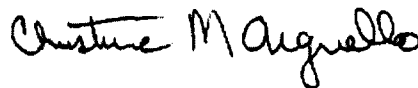
of virtually identical causes of action may be dismissed as frivolous or malicious. **See *Bailey v. Johnson***, 846 F.2d 1019, 1021 (5th Cir. 1988) (per curiam); ***Van Meter v. Morgan***, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam). The Court may consult its own records to determine whether a pleading repeats pending or previously litigated claims. **See *Duhart v. Carlson***, 469 F.2d 471 (10th Cir. 1972). The Court has examined its records and is satisfied that the claims asserted against Defendants Leiba and Webster are repetitive of the claims Mr. Cooper asserts in Case No. 08-cv-01599-CMA.

The Court also finds that even if Mr. Cooper's claims were not legally frivolous, the claims appear to be barred by the statute of limitations, as the acts allegedly committed by Defendants took place in February 2008. Furthermore, the Court will not address in this case the service of process issue that is pending in Case No. 08-cv-01599-CMA with respect to Defendants Leiba and Webster. Accordingly, it is

ORDERED that the Complaint and action are dismissed with prejudice as legally frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

DATED at Denver, Colorado, this 28th day of July, 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

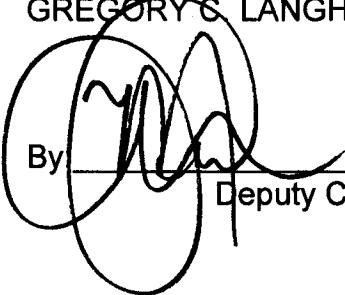
CERTIFICATE OF MAILING

Civil Action No. 10-cv-01514-BNB

Dana Cooper
Prisoner No. 135056
Colorado State Penitentiary
P.O. Box 777
Cañon City, CO 81215-0777

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 7/29/10

GREGORY G. LANGHAM, CLERK

By  _____
Deputy Clerk