

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02171-BNB

RANDY KAILEY,

Plaintiff,

v.

BILL RITTER, JR., et al.,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 22 2010

GREGORY C. LANGHAM
CLERK

ORDER

This matter is before the Court on the Letter that Mr. Kailey, a State of Colorado prisoner, filed with the Court on November 9, 2010. In the Letter, Mr. Kailey objects to the November 2, 2010 Order that directs him to file an Amended Complaint. For the reasons stated below, Mr. Kailey again will be instructed to file an Amended Complaint in keeping with the Court's November 2, 2010 Order.

Mr. Kailey identifies the following reasons as a basis for not having to file an Amended Complaint:

- 1) According to the Court's November 2 Order he is instructed to file eleven separate complaints, even though he is not able to pay the filing fee for one complaint;
- 2) Proof of exhaustion in each of the claims is evidenced in the Index of Supplemental Documentation that he filed in this case and therefore would not be available to include as attachments in newly filed actions;
- 3) If he is required to file new actions it is likely that he will violate the time limitations with regard to some of the claims he has asserted in this action because provisions under the Colorado Governmental Immunity Act have been revised;

4) The first amended complaint filed by class counsel in Case No. 92-cv-0870-JLK (*Montez, et al., v. Owens, et al.*) was used as a template in preparing this action to make certain the pleading requirements under Fed. R. Civ. P. 8 were met; and

5) The Court should consider severing the condition of confinement claims from the discrimination claims as was done in the *Montez* case and allow the cases to be related so the Index of Supplemental Documentation can be used in each of the cases.

First, Mr. Kailey is not asserting only eleven claims. The Court has found that overall he has identified eighty-two claims. Second, it is Mr. Kailey's responsibility to present his claims in keeping with the Federal Rules of Civil Procedure. Using a copy of a complaint filed by an attorney in a class action suit or choosing to use a chronological format to show the elements of a conspiracy does not exempt Mr. Kailey from complying with Rule 8 or Rule 20(a)(2) of the Federal Rules of Civil Procedure. Mr. Kailey also does not assert how any changes to Colo. Rev. Stat. §§ 24-10-101 through 110, which involves the Colorado Governmental Immunity Act, affects the statute of limitations for filing a § 1983 action in this Court. Finally, the Court finds no reason to sever Mr. Kailey's condition of confinement claims from his discrimination claims.

To assist Mr. Kailey, however, the Clerk of the Court will be directed to return to him the original copies of the Appendices that he submitted with the Complaint in this action. Accordingly, it is

ORDERED that Mr. Kailey has **thirty days from the date of this Order** to comply with the November 11, 2010 Order if he wishes to pursue properly asserted claims in this action. It is

FURTHER ORDERED that if Mr. Kailey fails to comply with the November 11, 2010 Order, within the time allowed, the action will be dismissed without further notice. It is

FURTHER ORDERED that the Clerk of the Court shall return to Mr. Kailey the original copies of the Appendices he submitted to the Court with the Complaint he filed in this action.

DATED at Denver, Colorado, this 22nd day of November, 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-02171-BNB

Randy Kailey
Prisoner No. 50247
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER and the Appendices to the Complaint** to the above-named individuals on 11/22/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk