

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

BRIAN PATRICK STREET,

Plaintiff,

v.

CASE NO. 5:09cv407/RS-AK

BROWN, et al,

Defendants.

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ORDER

Plaintiff filed the complaint in this case, which was not reviewed pending receipt of an initial filing fee. The case was not properly referred when the fee was paid, and therefore, review has been delayed. However, upon review it is now clear that this matter should be transferred because the suit is brought against defendants who reside at the Federal Correctional Institution in Littleton, Colorado, and as such this case should be transferred to the United States District Court for Colorado pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 85.

A federal district court has the authority under 28 U.S.C. § 1406(a) to transfer a case to another district or division "in which it could have been brought." A court may raise the issue of defective venue *sua sponte*, but should not dismiss an improperly filed case for lack of venue without giving the parties an opportunity to respond. Lipofsky v. New York State Workers Comp. Bd., 861 F.2d 1257, 1259 (11th Cir. 1988). The Lipofsky court did not place the same limitations on the court's ability to transfer a case to the appropriate forum pursuant to 28 U.S.C. § 1404(a). *See Lipofsky*, 861 F.2d at 1259, n. 2. Thus, this case should be transferred rather than dismissed.

IT IS ORDERED that this case is transferred to the United States District Court for Colorado.

ORDERED on August 16, 2010.

/S/ Richard Smoak

RICHARD SMOAK

UNITED STATES DISTRICT JUDGE