

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01642-BNB

CHARLES ELLOIT HARRIS, JR.,

Plaintiff,

v.

ROBERT FITZGIBBONS 97029,
ANTHONY WILKERSON 05161,
KEITH FOWLER 82071,
DANIELA BARNHILL 05149,
JOHN SULLIVAN 94044,
ERNEST QUITANA 01052,
MATTHEW BUCKSKIN 05167, and
JOHN ADSIT 01052,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 15 2007

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Charles Elloit Harris, Jr., is incarcerated at the Denver County Jail. He has filed a Prisoner Complaint for unspecified money damages alleging that his constitutional rights were violated on July 17, 2006, in the course of his arrest. Mr. Harris has been granted leave to proceed pursuant to 28 U.S.C. § 1915 (Supp. 2006) without payment of an initial partial filing fee.

The Court must construe the complaint liberally because Mr. Harris is representing himself. **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 be the **pro se** litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, Mr. Harris will be ordered to file an amended complaint.

The Court has reviewed the complaint and finds that it is deficient because Mr. Harris fails to allege specific facts that demonstrate how each named Defendant personally participated in the alleged violations of his constitutional rights. Mr. Harris asserts that on July 17, 2006, he was subjected to excessive force by two Denver police officers, Defendants Robert Fitzgibbons and Anthony Wilkerson, in the course of an arrest. Mr. Harris does not assert any claims against the other six Defendants and it is not clear why those Defendants are being sued in this action. The six Defendants in question are identified in the caption of the complaint as Keith Fowler, Daniela Barnhill, John Sullivan, Ernest Quitana, Matthew Buckskin, and John Adsit. Mr. Harris will be directed to file an amended complaint to clarify whatever claims he may be asserting against these six Defendants, as well as against Mr. Fitzgibbons and Mr. Wilkerson.

Mr. Harris is advised that 42 U.S.C. § 1983 “provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights.” **Conn v. Gabbert**, 526 U.S. 286, 290 (1999). Therefore, Mr. Harris should name as Defendants in the amended complaint only those individuals or entities that he believes actually violated his constitutional rights. Furthermore, personal participation is an essential allegation in a civil rights action. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Mr. Harris must show that each Defendant caused the deprivation of a federal right. **See Kentucky v. Graham**, 473 U.S. 159, 166 (1985). There must be an affirmative link between the alleged constitutional violation and each Defendant’s participation, control or direction, or failure to supervise. **See Butler v. City of Norman**, 992 F.2d 1053, 1055 (10th Cir. 1993). A Defendant may not be held liable on a theory of respondeat superior merely because of

his or her supervisory position. **See *Pembaur v. City of Cincinnati***, 475 U.S. 469, 479 (1986); ***McKee v. Heggy***, 703 F.2d 479, 483 (10th Cir. 1983).

Finally, Mr. Harris is advised that he must provide sufficient copies of the amended complaint to serve each named Defendant. The Court will not make the copies necessary for service. Therefore, Mr. Harris should review his claims carefully to ensure that each named Defendant personally participated in the asserted constitutional violations. Accordingly, it is

ORDERED that Mr. Harris file **within thirty (30) days from the date of this order** an amended complaint that complies with this order. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Harris, together with a copy of this order, two copies of the following form: Prisoner Complaint. It is

FURTHER ORDERED that Mr. Harris submit sufficient copies of the amended complaint to serve each named Defendant. It is

FURTHER ORDERED that, if Mr. Harris fails within the time allowed to file an original and sufficient copies of an amended complaint that complies with this order to the Court's satisfaction, the complaint and the action will be dismissed without further notice.

DATED February 15, 2007, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 06-cv-01642-BNB

Charles E. Harris, Jr.
Prisoner No. 1498836
Denver County Jail
PO Box 1108
Denver, CO 80201

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of Prisoner Complaint** to the above-named individuals on 2/15/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk