

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01987-BNB

RICHARD POWELL,

Plaintiff,

v.

JOE ORTIZ, Executive Dir. of Dept. of Corrections,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 19 2006

GREGORY C. LANGHAM
CLERK

ORDER TO AMEND COMPLAINT

Plaintiff Richard Powell currently resides in Colorado Springs, Colorado. Mr. Powell has filed a *pro se* Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. Plaintiff seeks money damages.

The Court must construe the Complaint liberally because Mr. Powell 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. *See Hall*, 935 F.2d at 1110.

To the extent that Plaintiff has raised constitutional claims pursuant to § 1983, he must assert personal participation by each named defendant in the alleged constitutional violations. 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, a plaintiff 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).

Furthermore, a defendant, such as Defendant Joe Ortiz, may not be held liable on a theory of respondeat superior merely because of their 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). Therefore, Mr. Powell is instructed to amend the Complaint to name as defendants the individuals who personally participated in the alleged constitutional violations. Plaintiff also is instructed to state what each named defendant did to violate his constitutional rights. Accordingly, it is

ORDERED that Mr. Powell file **within thirty days from the date of this Order** an original copy of an Amended Complaint that complies with the directives in this Order. It is

FURTHER ORDERED that the Amended Complaint shall be titled "Amended Prisoner Complaint," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Powell, together with a copy of this Order, two copies of a current Court-approved Prisoner Complaint form for use in submitting the Amended Complaint. It is

FURTHER ORDERED that Mr. Powell submit sufficient copies of the Amended Complaint to serve each named defendant. It is

FURTHER ORDERED that if Mr. Powell fails to comply with this Order to the

Court's satisfaction, within the time allowed, the Complaint and the action will be dismissed without further notice.

DATED October 19, 2006, 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-01987-BNB

Richard Powell
3040 E. Fountain, Apt. 101
Colorado Springs, CO 80910

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of Prisoner Complaint** to the above-named individuals on 10/19/06

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk