

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00106-BNB

JOHN THOMAS McNALLY,

Plaintiff,

v.

EL PASO COUNTY SHERIFF'S OFFICE,
SHERIFF TERRY MAKETA,
DEPUTY HUNTS,
DEPUTY COX,
CORRECTIONAL HEALTH CARE DEPT.,
HEALTHCARE ADMINISTRATOR JUDY FENDER,
NURSE: NAME UNKNOWN, and
BOARD COUNTY COMMISSIONERS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
COLORADO SPRINGS, COLORADO

FEB - 2 2007

CAROLRY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, John Thomas McNally, is confined at the El Paso County Jail in Colorado Springs, Colorado. Mr. McNally has filed *pro se* a Prisoner Complaint alleging that his constitutional rights have been violated. The court must construe the complaint liberally because Mr. McNally 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. McNally will be ordered to file an amended complaint.

The court has reviewed the complaint filed in this action and finds that it is deficient. First, it is not clear who the Defendants in this action are. Mr. McNally

identifies eight Defendants in the caption of the complaint. However, he does not list all eight of those named Defendants in the portion of the complaint describing the parties to this action. Mr. McNally also has failed to provide an address for each named Defendant.

In addition, assuming Mr. McNally does intend to assert claims against all eight of the Defendants listed in the caption of the complaint, he fails to allege facts to demonstrate that each named Defendant personally participated in the asserted 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, Mr. McNally 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. **See *Pembaur v. City of Cincinnati***, 475 U.S. 469, 479 (1986); ***McKee v. Heggy***, 703 F.2d 479, 483 (10th Cir. 1983).

For these reasons, Mr. McNally will be directed to file an amended complaint to clarify who he intends to sue in this action, to provide an address for each named Defendant, and to allege facts that demonstrate how each named Defendant personally participated in the asserted constitutional violations. Mr. McNally is advised that § 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. McNally should name as Defendants in the amended complaint the individuals or entities he believes actually violated his constitutional rights.

Accordingly, it is

ORDERED that Mr. McNally 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. McNally, together with a copy of this order, two copies of the following forms: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. McNally fails within the time allowed to file an amended complaint that complies with this order to the court's satisfaction, the action will be dismissed without further notice.

DATED February 2, 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

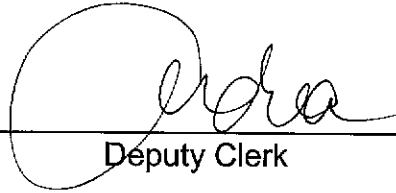
Civil Action No. 07-cv-00106-BNB

John Thomas McNally
Prisoner No. 00205698
El Paso County Det. Facility
2739 E. Las Vegas Street
Colorado Springs, CO 80906

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

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk