

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00573-BNB

FREDERICK L. CULP,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS, and  
FORT LYONS CORRECTIONAL FACILITY,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAY 29 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, Frederick L. Culp, has filed a *pro se* Complaint. The Court must construe the Complaint liberally because Mr. Culp is not represented by an attorney. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). However, the Court should not act as a *pro se* litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, Mr. Culp will be ordered to file an Amended Complaint.

Mr. Culp asserts that his rights under the Americans with Disabilities Act (ADA) were violated, when he was in the custody of the Colorado Department of Corrections and incarcerated at the Fort Lyons, Colorado, Correctional Facility. Mr. Culp seeks money damages.

Mr. Culp may not sue the Colorado Department of Corrections or the Fort Lyons Correctional Facility. The State of Colorado and its entities are protected by Eleventh Amendment immunity. **See Will v. Michigan Dep't of State Police**, 491 U.S. 58, 66 (1989); **Meade v. Grubbs**, 841 F.2d 1512, 1525-26 (10<sup>th</sup> Cir. 1988). "It is well

established that absent an unmistakable waiver by the state of its Eleventh Amendment immunity, or an unmistakable abrogation of such immunity by Congress, the amendment provides absolute immunity from suit in federal courts for states and their agencies.” **Ramirez v. Oklahoma Dep’t of Mental Health**, 41 F.3d 584, 588 (10<sup>th</sup> Cir. 1994), **overruled on other grounds by Ellis v. University of Kansas Medical Center**, 163 F.3d 1186 (10<sup>th</sup> Cir. 1998). The State of Colorado has not waived its Eleventh Amendment immunity, **see Griess v. Colorado**, 841 F.2d 1042, 1044-45 (10<sup>th</sup> Cir. 1988), and congressional enactment of 42 U.S.C. § 1983 did not abrogate Eleventh Amendment immunity, **see Quern v. Jordan**, 440 U.S. 332, 340-345 (1979). The Eleventh Amendment applies to all suits against the state and its agencies, regardless of the relief sought. **See Higginbotham v. Okla. Transp. Com’n**, 328 F.3d 638, 644 (10<sup>th</sup> Cir. 2003).

Mr. Culp must assert personal participation by each properly named defendant. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10<sup>th</sup> Cir. 1976). To establish personal participation, Mr. Culp must name and show how named defendants caused a deprivation of his federal rights. **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 (10<sup>th</sup> 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 (10<sup>th</sup> Cir. 1983).

Furthermore, in order for Mr. Culp to state a claim in this Court, he must state

with specificity what each named Defendant did to him, when they did it, how their action harmed him, and what specific legal right they violated. ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10<sup>th</sup> Cir. 2007). Accordingly, it is

ORDERED that Mr. Culp file, **within thirty 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. Culp, together with a copy of this Order, two copies of a current Court-approved Complaint form. It is

FURTHER ORDERED that if Mr. Culp 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 May 29, 2009, 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. 09-cv-00573-BNB

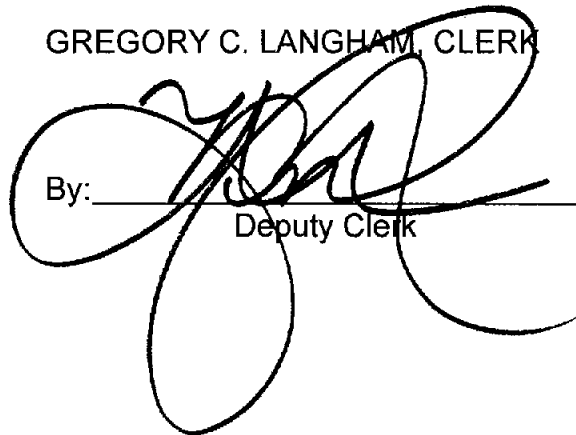
Frederick L. Culp  
P.O. Box 460504  
Glendale, CO 80246-0504

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Complaint form** to the above-named individuals on 5/29/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.