

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00778-BNB

NICHOLAS SOUDERS,

Plaintiff,

v.

WARDEN BRILL, Kit Carson Correctional Facility,
MS. MAINE, Former Contract Monitor,
MS. SMALIZER, Former Contract Monitor,
PHYSICIAN JUDY GRAY, Kit Carson Correctional Fac.,
JOHN DOE, and
JANE DOE,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR - 8 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Nicholas Souders, is in the custody of the Colorado Department of Corrections at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Souders initiated this action by filing *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. The court must construe the complaint liberally because Mr. Souders 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 (10th Cir. 1991). However, the court should not be an advocate for a *pro se* litigant. **See *Hall***, 935 F.2d at 1110. For the reasons stated below, Mr. Souders will be ordered to file an amended complaint.

The court has reviewed the complaint filed by Mr. Souders and finds that it is deficient. First, Mr. Souders fails to comply with the court's local rules regarding the

listing of the Defendants in the caption of the complaint. Pursuant to Rule 10.1J. of the Local Rules of Practice of the United States District Court for the District of Colorado-Civil, “[p]arties shall be listed in a caption with one party per line. The proper name of a party shall be in capital letters, and any identifying text shall be in upper and lower case immediately following the proper name.” Mr. Souders’ failure to comply with the court’s local rules creates some confusion in ascertaining who is being sued in this action.

The more critical deficiency in Mr. Souders’ complaint is his failure to allege facts that demonstrate how the named Defendants personally participated in the asserted constitutional violations. Construing the complaint liberally, it appears that Mr. Souders believes his constitutional rights have been violated because he has been denied adequate medical care. However, he fails to provide specific factual allegations that detail how each named Defendant allegedly violated his rights.

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. Souders 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 who is a supervisory official 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. Souders must file an amended complaint. Mr. Souders is advised that, in order to state a claim in federal court, his amended "complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated." *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). Accordingly, it is

ORDERED that Mr. Souders file **within thirty (30) days from the date of this order** an amended complaint that complies with this order if he wishes to pursue his claims in this action. It is

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

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

DATED April 8, 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-00778-BNB

Nicholas Souders
Prisoner No. 127292
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner Complaint form** to the above-named individuals on 4/8/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk