

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00810-ZLW-MJW

DANIEL JAMES VIGIL,

Plaintiff,

v.

BLAKE McCLELLAN, et al.,

Defendants.

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Plaintiff Daniel J. Vigil's Motion for Leave to File a First Amended Complaint (docket no. 86) is GRANTED IN PART AND DENIED IN PART. The portion of the subject motion (docket no. 86) seeking to add Mesa County Sheriff, Stan Hilkey, both in his official capacity and in his individual capacity is GRANTED. The portion of the subject motion (docket no. 86) that seeks to include references to "Mesa County" is DENIED. The First Amended Complaint shall be refiled with the court on or before **March 26, 2010**, with all references to "Mesa County" deleted since "Mesa County" is not a party to this lawsuit.

Federal Rule of Civil Procedure 15(a)(2) states, in pertinent part; "[t]he court should freely give leave when justice so requires."

Refusing leave to amend is generally only justified "upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." Frank v. U.S. West, Inc., 3 F.3d 1357, 1365 (10th Cir. 1993). Here, the court finds that the Plaintiff originally filed this case pro se. Pro bono counsel has now entered on behalf of the Plaintiff. The First Amended Complaint does not change any of the claims against the original Defendants and adds claims for supervisory liability against the Mesa County Sheriff, Stan Hilkey, both in his official capacity and in his individual capacity pursuant to Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988). Defendants' argument that Sheriff Hilkey was not personally involved in any of the physical activities that may have resulted in injury to Plaintiff may be subject to a motion for summary judgment but should not preclude the Plaintiff from amending his Complaint.

Date: March 15, 2010
