

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01202-BNB

LEO SIMMONS,

Plaintiff,

v.

H. BRILL, Warden,
PHILLIPS, Chairperson,
J. GRAY, Health Service Administrator,
MERCHANT,
FRAZIER, and
DOWD,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 27 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED PRISONER COMPLAINT

Plaintiff, Leo Simmons, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Kit Carson Correctional Facility in Burlington, Colorado. Mr. Simmons initiated this action by filing a *pro se* Prisoner Complaint alleging that his constitutional rights have been violated. He seeks money damages and injunctive relief.

The Court must construe the Prisoner Complaint liberally because Mr. Simmons 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. For the reasons stated below, the Court will delay a decision regarding Mr. Simmons' ability to proceed pursuant to 28 U.S.C. § 1915 and will direct Mr. Simmons to file an Amended Prisoner Complaint.

On August 7, 2009, the Court directed Mr. Simmons to show cause why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g) because he has, on three or more occasions, brought an action in this Court that was dismissed on the grounds that it was frivolous or failed to state a claim. Mr. Simmons filed a Response on August 26, 2009. Like in the Complaint, Mr. Simmons asserts conclusory and vague medical claims in the Response. Mr. Simmons, therefore, will be directed to amend his Complaint and assert claims that have placed him in imminent danger of serious physical injury. Mr. Simmons is instructed to identify the serious physical injury.

In the Amended Complaint, Mr. Simmons also must assert personal participation by each named defendant. **See *Bennett v. Passic***, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Mr. Simmons 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 (10th 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 (10th Cir. 1983).

To state a claim in federal court, Mr. Simmons must explain in the Amended Complaint what each defendant did to him, when the defendant did the action, how the defendant's action harmed him, and what specific legal right he 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. Simmons file **within thirty days from the date of this Order** an Amended Prisoner Complaint that is in keeping with the instant Order. It is

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

FURTHER ORDERED that if Mr. Simmons fails to file an Amended Prisoner Complaint within the time allowed Mr. Simmons' ability to proceed pursuant to 28 U.S.C. § 1915 again will be subject to denial.

DATED August 27, 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-01202-BNB

Leo Simmons
Prisoner No. 62094
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** to the above-named individuals on 8/27/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk