

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01268-BNB

ERNEST WEST,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,  
CAPTAIN SCOTT, Sterling Corrections,  
JOANN STOCK, Sterling Medical,  
MR. ESTEP, CMRC Director,  
MR. YOUNGBLOOD,  
MR. YEATON, Unit Manager CMRC, and  
MS. CALLWELL, CMRC Medical,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUN 18 2009

GREGORY C. LANGHAM  
CLERK

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ORDER TO DISMISS IN PART AND TO DRAW CASE  
TO A DISTRICT JUDGE AND TO A MAGISTRATE JUDGE

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Plaintiff Ernest West is in the custody of the Colorado Department of Corrections and is incarcerated at the Cheyenne Mountain Re-Entry Center in Colorado Springs, Colorado. He initiated this action, on May 21, 2009, by submitting a Prisoner Complaint to the Court.

The Court must construe Mr. West's Prisoner Complaint liberally because he is a *pro se* litigant. *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. **Hall**, 935 F.2d at 1110. The action will be dismissed in part and drawn in part.

Mr. West asserts that he has been denied adequate medical treatment for pain in his left shoulder and lower back and use of a "sleep apnea machine." (Compl. at 4.) He also asserts that he has been placed in punitive segregation for no reason other than for punishment and retaliation. Mr. West also appears to assert a discrimination claim and seeks money damages. The claims Mr. West asserts against Captain Scott, Joann Stock, Mr. Estep, Mr. Youngblood, Mr. Yeaton, and Ms. Callwell will be drawn to a district judge and to a magistrate judge.

As for the Colorado Department of Corrections, 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). Therefore, the Colorado Department of Corrections will be dismissed as a party to the action.

The Court notes that, contrary to Mr. West's statements on Page Seven of the Prisoner Complaint form, one of his previous cases, Case No. 07-cv-00226-REB-KLM was not dismissed as moot. Case No. 07-cv-00226-REB-KLM was dismissed because Mr. West failed to comply with the Court's order directing him to make monthly payments against the balance of the \$350.00 filing fee, until the fee was paid in full. Mr. West is reminded that he must make monthly payments in the instant case, in keeping with 28 U.S.C. § 1915, and as directed in the June 1, 2009, Order, or the case will be subject to dismissal. Accordingly, it is

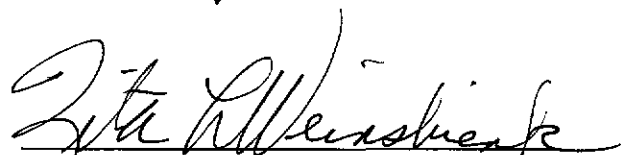
ORDERED that Defendant Colorado Department of Corrections is dismissed from the action. It is

FURTHER ORDERED that the Clerk of the Court shall remove Defendant Colorado Department of Corrections from the docketing record as a party to this action. It is

FURTHER ORDERED that the claims asserted against Defendants Captain Scott, Joann Stock, Mr. Estep, Mr. Youngblood, Mr. Yeaton, and Ms. Callwell shall be drawn to a district judge and to a magistrate judge.

DATED at Denver, Colorado, this 17 day of June, 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01268-BNB

Ernest West  
Prisoner No. 111617  
CMRC  
2925 E. Las Vegas St.  
Colorado Springs, CO 80906

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 6/18/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk