

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01454-BNB

FELICIA WALKER,

Plaintiff,

v.

ARI ZAVARAS, Director,
CECILIA LOPEZ, Medical Staff,
MS. SHOEMAKER, Medical Director, D.O.C., and
COLORADO DEPT. OF CORRECTIONS,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 17 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Felicia Walker, has filed a *pro se* Prisoner Complaint pursuant to 42 U.S.C. § 1913 raising violations of her constitutional rights. Ms. Walker is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Denver Women's Correctional Facility in Denver, Colorado. The Court must construe the Complaint liberally because Ms. Walker 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 act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Ms. Walker will be ordered to file an Amended Prisoner Complaint.

Ms. Walker may not sue 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 (10th 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 (10th Cir. 1994), **overruled on other grounds by Ellis v. University of Kansas Medical Center**, 163 F.3d 1186 (10th Cir. 1998). The State of Colorado has not waived its Eleventh Amendment immunity, **see Griess v. Colorado**, 841 F.2d 1042, 1044-45 (10th 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 (10th Cir. 2003).

Ms. Walker also must assert personal participation by each properly named defendant. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Ms. Walker must name and show how named defendants caused a deprivation of her 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).

Furthermore, in order for Ms. Walker to state a claim in this Court, she must state with specificity what each named Defendant did to her, when they did it, how their

action harmed her, and what specific legal right they violated. ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007). Accordingly, it is

ORDERED that Ms. Walker file, **within thirty days from the date of this Order**, an Amended Prisoner Complaint that complies with this Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Ms. Walker, together with a copy of this Order, two copies of a current Court-approved Prisoner Complaint form. It is

FURTHER ORDERED that if Ms. Walker fails within the time allowed to file an Amended Prisoner Complaint that complies with this Order, to the Court's satisfaction, the action will be dismissed without further notice.

DATED August 17, 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-01454-BNB

Felicia Walker
Prisoner No. 135374
Denver Women's Corr. Facility
PO Box 392005
Denver, CO 80239

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 8/17/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk