

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09CV02149 -BNB
(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

RICHIE HILL,

Plaintiff,

v.

LT. C. RIVERS,
C.O. HUEBERT, and
C.O. TREJELLO,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 09 2009

GREGORY C. LANGHAM
CLERK

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING NEXT FRIEND TO CURE DEFICIENCIES AND SHOW CAUSE**

Dawane Mallett, an inmate at the United States Penitentiary, Administrative Maximum, at Florence, Colorado, has filed a document titled "Motion for (Writ of Mandamus)" on behalf of Plaintiff Richie Hill as his next friend. Mr. Mallett has failed to file a Prisoner Complaint and he has failed either to pay the \$350.00 filing fee or to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. As part of the court's review pursuant to D.C.COLO.LCivR 8.2, the court has determined that the motion is deficient as described in this order. Notwithstanding the deficiencies, the clerk of the court will be directed to commence a civil action. Mr. Mallett will be directed to cure the following if he wishes to pursue this action. Any papers that Mr. Mallett files in response to this order must include the civil action

number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing required financial information
- (5) is missing an original signature by the prisoner
- (6) is not on proper form (must use the court's current form)
- (7) names in caption do not match names in caption of complaint, petition or habeas application
- (8) An original and a copy have not been received by the court. Only an original has been received.
- (9) other: motion is necessary only if full filing fee is not paid in advance.

Complaint, Petition or Application:

- (10) is not submitted
- (11) is not on proper form (must use the court's current form)
- (12) is missing an original signature by the prisoner
- (13) is missing page nos. ____
- (14) uses et al. instead of listing all parties in caption
- (15) An original and a copy have not been received by the court. Only an original has been received.
- (16) Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) names in caption do not match names in text
- (18) other _____

In addition to these deficiencies, the court notes that Mr. Mallett fails to demonstrate that he has standing to proceed in this action as Mr. Hill's next friend. "The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance." *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004); **see also** *McDonald v. Coyle*, 175 F. App'x 947, 949 (10th Cir. 2006). In general, a litigant "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Kowalski*, 543 U.S. at 129 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). In limited circumstances, a next friend may be

granted standing to assert the rights of another. *See id.* at 129-30. However, in order to invoke this limited exception, the party seeking to proceed as a next friend bears the burden of showing that he “has a ‘close’ relationship with the person who possesses the right” at issue and that “there is a ‘hindrance’ to the possessor’s ability to protect his own interests.” *Id.* at 130; *accord Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990). Mr. Mallett fails to demonstrate that these requirements have been met. Therefore, in addition to being directed to cure the deficiencies designated above, he will be ordered to show cause why this action should not be dismissed for lack of standing.

Accordingly it is

ORDERED that the clerk of the court is directed to commence a civil action. It is

FURTHER ORDERED that Mr. Mallett cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Mr. Mallett files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Mallett, together with a copy of this order, two copies of the following forms: Prisoner’s Motion and Affidavit For Leave to Proceed Pursuant to 28 U.S.C. § 1915; Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Mallett fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice. It is

FURTHER ORDERED that Mr. Mallett show cause **within thirty (30) days from the date of this order** why this action should not be dismissed because he lacks standing to act as Mr. Hill’s next friend.

DATED at Denver, Colorado, this 4th day of September, 2009.

BY THE COURT:

Boyd N. Boland
BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. **09CV02149**

Dawane Arthur Mallett
Reg No. 13944-097
US Penitentiary ADX
P.O. Box 8500
Florence, CO 81226-8500

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and Prisoner Complaint forms** to the above-named individuals on 9/9/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk