

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00604-BNB

MICHAEL WAYNE BINGHAM, CDOC # 111108,

Plaintiff,

v.

ARISTEDES ZAVARAS, Exec. Dir. CDOC,
WARDEN TIMME, FCF,
LT. TAPPI,
LT. KOCHEVER,
LT. DIRECTO,
LT. BRADEN,
LT. ESPINOZA,
SGT. MARTIN,
SGT. STOGHILL,
JIM MOORE,
CAPT. GONZALES,
LT. LUCERO,
WARDEN MILYARD,
C/O CLINTON AULTMAN, and
JANEEN LANE, LPC,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL -7 2010

GREGORY C. LANGHAM
CLERK

ORDER TO DISMISS IN PART AND TO DRAW IN PART

Plaintiff Michael Wayne Bingham is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Sterling, Colorado, Correctional Facility. On March 4, 2010, Mr. Bingham, acting *pro se*, submitted to the Court a Prisoner Complaint pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343. Magistrate Judge Boyd N. Boland reviewed the Complaint and entered an order on April 13, 2010, instructing Mr. Bingham to file an Amended Complaint and name only proper parties to

the action and assert personal participation by the properly named parties. The Clerk of the Court sent Court-approved forms to Mr. Bingham for use in filing the Amended Prisoner Complaint.

On May 20, 2010, Mr. Bingham filed a First Amended Complaint, after being granted an extension of time, but he failed to use a Court-approved form. Magistrate Judge Boland entered a minute order on May 24, 2010, instructing Mr. Bingham to submit his Amended Complaint on the Court-approved form that was sent to him with the April 13 Order. In response to the May 24 Minute Order, Mr. Bingham requested that the Court send him a copy of the Amended Complaint he filed on May 20. Mr. Bingham also requested a ninety-day extension of time to file a second amended complaint. On May 28, 2010, Magistrate Judge Boland entered a minute order directing the Clerk of the Court to send Mr. Bingham a copy of the May 20 Complaint and allowing him an additional thirty days to file a second amended complaint. Mr. Bingham filed a Court-approved Prisoner Complaint form on June 11, 2010, along with a revised copy of the First Amended Complaint that he filed on May 20, which is not presented on a Court-approved form.

Upon review of the Court-approved form and the revised May 20 Amended Complaint, both of which were filed on June 11, the Court finds that Mr. Bingham has failed in part to comply with Magistrate Judge Boland's April 13 Order. The revised May 20 Amended Complaint contains a fourth claim that is not included in the Court-approved form and a defendant listed in the caption, Ms. Robinson, who is not named as a defendant in the caption of the Court-approved form. Mr. Bingham also did not set forth supporting facts under Claims One through Three in the Court-approved form but only referred to Pages Ten and Eleven of the revised copy of the First Amended

Complaint for the basis of Claims One through Three. The Court, nonetheless, will consider Claims One through Three as stated on Pages Ten and Eleven of the revised May 20 Complaint (Doc. No. 36).

In Claim One, Mr. Bingham asserts that Defendants Martin, Stoghill, Kochever, Directo, Timme, and Clinton Aultman failed to protect him from attacks by other prisoners. In Claim Two, Mr. Bingham asserts that Defendant Janeen Lane refused to provide him adequate medical care, and in Claim Three, he asserts that Defendants Aristedes Zavaras, Jim Moore, and Milyard retaliated against him for filing grievances and for filing this action. Mr. Bingham seeks money damages, declaratory relief, and a transfer to a different prison facility.

Based on the above findings, the claims as asserted against Defendants Aristedes Zavaras, Timme, Kochever, Directo, Martin, Stoghill, Janeen Lane, Jim Moore, Milyard, and Clinton Aultman will be drawn to a district judge and to a magistrate judge. Defendants Tappi, Braden, Espinoza, Gonzales, Lucero, and Robinson, however, will be dismissed from the action because contrary to the April 13 Order Mr. Bingham failed to assert claims against Defendants Tappi, Braden, Espinoza, and Gonzales and to name Ms. Robinson in the caption in the Court-approved form. Accordingly, it is

ORDERED that the Prisoner Complaint (Doc. No. 35), Second Amended Complaint (Doc. No. 36 at 10 and 11), and the action, as asserted against Defendants Aristedes Zavaras, Timme, Kochever, Directo, Martin, Stoghill, Janeen Lane, Jim Moore, Milyard, and Clinton Aultman shall be drawn to a district judge and to a magistrate judge. It is

FURTHER ORDERED that Defendants Tappi, Braden, Espinoza, Gonzales, Lucero, and Ms. Robinson are dismissed from the action, and the Clerk of the Court is instructed to remove them as named parties to the suit. It is

FURTHER ORDERED that the Motion Under 29 U.S.C. § 455(a) for Recusal of Magistrate Boyd N. Boland (Doc. No. 37) is DENIED as moot. It is

FURTHER ORDERED that the Motion for Appointment of Counsel (Doc. No. 38) is DENIED as premature. It is

FURTHER ORDERED that the Request for Status (Doc. No. 40) is DENIED as moot.

DATED at Denver, Colorado, this 7th day of July, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00604-BNB

Michael Wayne Bingham
Prisoner No. 111108
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/7/10

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk