

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01121-BNB

JACOB DANIEL OAKLEY, 123294,

Plaintiff,

v.

[ARISTEDES] ZAVARAS, Executive Director,  
SUSAN JONES, Warden, CSP,  
BOYD, Nurse Practitioner, CSP,  
ALLENBERG, P.A., Employee #, CSP,  
TURNER, Employee Number, CSP,  
SANTOS, C/O, Unite [sic] E-17, CSP,  
DUTY C/O, Unite [sic] E-17, CSP,  
DALTON, C/O, E-17, CSP,  
JOHN DOE, Eye Doctor, CSP,  
JOHN AND JANE DOE x 30, Medical Personnell [sic] at CTCF, SCCF, CSP, and  
JOHN AND JANE DOE x 700, at CTCF, SCCF, CSP,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL -7 2010

**GREGORY C. LANGHAM**  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED PRISONER COMPLAINT

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Plaintiff Jacob Daniel Oakley is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. Mr. Oakley, acting *pro se*, initiated this action by filing a pleading titled, "Emergency Medical Order and Notice of Intent to Sue Employees of (D.O.C.)." The Pleading was deficient. Magistrate Judge Boyd N. Boland instructed Mr. Oakley to cure the deficiency by filing his claims on a current Court-approved form used in filing prisoner complaints, which he did on June 21, 2010.

The Court must construe the Complaint liberally because Mr. Oakley 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. **See Hall**, 935 F.2d at 1110. For the reasons stated below, Mr. Oakley will be ordered to file an Amended Prisoner Complaint and assert personal participation by the properly named parties.

Mr. Oakley must assert personal participation by each named defendant. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10<sup>th</sup> Cir. 1976). To establish personal participation, Mr. Oakley must name and show how 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 (10<sup>th</sup> 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 (10<sup>th</sup> Cir. 1983).

Mr. Oakley, therefore, will be directed to file an Amended Prisoner Complaint that alleges specific facts that demonstrate how each named defendant personally participated in the asserted constitutional violation. In order for Mr. Oakley to state a claim in federal court, his Amended "[C]omplaint must explain what each defendant did to him [ ]; when the defendant did it; 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 (10<sup>th</sup> Cir. 2007).

Mr. Oakley also should note that he may use fictitious names, such as "John or Jane Doe," if he does not know the real names of the individuals who allegedly violated

his rights. However, if Mr. Oakley uses fictitious names he must provide sufficient information about each defendant so that they can be identified for purposes of service.

Accordingly, it is

ORDERED that Mr. Oakley file **within thirty days from the date of this Order** an Amended Prisoner Complaint that is in keeping with the instant Order and names the proper parties to the action. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Oakley, 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. Oakley fails to file an Amended Prisoner Complaint within the time allowed the action will be dismissed without further notice.

DATED at Denver, Colorado, this 7<sup>th</sup> day of July, 2010.

BY THE COURT:

*s/Craig B. Shaffer*

Craig B. Shaffer  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-01121-BNB

Jacob Daniel Oakley  
Prisoner No. 123294  
Colorado State Penitentiary  
P.O. Box 777  
Cañon City, CO 81215-0777

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner Complaint form** to the above-named individuals on 7/7/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk