

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02470-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

ARETHA MYLES MARTIN,

NOV 10 2010

Plaintiff,

GREGORY C. LANGHAM
CLERK

v.

DEPARTMENT OF CORRECTIONS,
HIGH PLAINS CORRECTIONAL FACILITY, Medical Department, and
JOHN DOE,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Aretha Myles Martin, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Denver Women's Correctional Facility in Denver, Colorado. Ms. Martin, acting *pro se*, has filed a Prisoner Complaint pursuant to 42 U.S.C. § 1983. The Court must construe the Complaint liberally because Ms. Martin is a *pro se* litigant. *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. Ms. Martin asserts that she incurred injuries when she fell from a top bunk and subsequently received improper medical care for the injuries. Ms. Martin seeks injunctive relief and money damages. For the reasons stated below, Ms. Martin will be ordered to file an Amended Complaint.

First, any claims against Defendant Department of Corrections is barred by the Eleventh Amendment. *See Will v. Michigan Dep' t of State Police*, 491 U.S. 58, 66

(1989). “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).

Second, Ms. Martin must name the parties who are responsible for violating her constitutional rights and assert each defendant’s personal participation in the alleged constitutional violations. Personal participation is an essential allegation in a civil rights action. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Ms. Martin must show that each defendant caused the deprivation of a federal right. **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 named defendant may not be held liable 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).

Ms. Martin is instructed that “to state a claim in federal court, a complaint 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 [Ms. Martin] believes the defendant violated.” **Nasious v. Two Unknown B.I.C.E. Agents**, 492 F.3d 1158, 1163 (10th Cir. 2007). Ms. Martin must state supporting facts for each listed claim in keeping with **Nasious**. The Court is not required to review all attachments and

determine what facts may support Ms. Martin's claims.

Ms. Martin also should note that she may use fictitious names, such as "John or Jane Doe," if she does not know the real names of the individuals who allegedly violated her rights. However, if Ms. Martin uses fictitious names she must provide sufficient information about each defendant so that they can be identified for purposes of service. Accordingly, it is

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

FURTHER ORDERED that the Clerk of the Court mail to Ms. Martin, together with a copy of this Order, two copies of the Prisoner Complaint form for use in submitting the Amended Complaint. It is

FURTHER ORDERED that if Ms. Martin within the time allowed fails to file an Amended Complaint that complies with this Order, the Complaint and the action will be dismissed without further notice.

DATED November 10, 2010, 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. 10-cv-02470-BNB

Aretha Myles Martin
Prisoner No. 90897
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 11/10/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk