

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01074-MSK-KLM

JOHN A. CLAICE,

Plaintiff,

v.

VANGELDER, CSP Lt., Unit L7, and  
NERESON, CSP. CO., Unit CO,

Defendants.

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**MINUTE ORDER**

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on Plaintiff's **Motion to Amend Complaint and Memorandum/Response** [Docket No. 33; Filed October 3, 2013] (the "Motion"). In the Motion, Plaintiff seeks to amend his Amended Complaint [#15] to insert claims against Defendants in their official capacities as well as in their individual capacities. Plaintiff also asks the Court to appoint him counsel in this matter. Finally, Plaintiff includes a Response to Defendants' pending Motion to Dismiss [#28].

IT IS HEREBY **ORDERED** that the Motion [#33] is **GRANTED in part and DENIED without prejudice in part**. To the extent that Plaintiff seeks to assert claims against Defendants in both their official and individual capacities, the Court notes that it must construe Plaintiff's filings liberally because he 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 (10<sup>th</sup> Cir. 1991). Indeed, examining Defendants' Motion to Dismiss [#28], Defendants have already interpreted Plaintiff's Amended Complaint [#15] as being asserted against them in both their official and individual capacities. Accordingly, to the extent that Plaintiff seeks this to be made explicit, the Motion is **granted**.

However, to the extent that Plaintiff seeks appointment of counsel, the Motion is **denied without prejudice**. Plaintiff appears to make no argument on this point and, regardless, is in violation of Local Rule 7.1C., which states that, "A motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate paper." Pro se litigants must follow the same procedural rules that govern other litigants. See *Nielson v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994). Plaintiff may file a separate

motion seeking appointment of counsel if he so chooses. The Court accepts the Motion [#33] as Plaintiff's Response to Defendants' Motion to Dismiss [#28]. Accordingly,

IT IS FURTHER **ORDERED** that the Clerk of the Court shall indicate on the docket that document #33 is the Response to Defendants' Motion to Dismiss [#28]. Defendants shall file a Reply **on or before October 28, 2013**.

Dated: October 11, 2013