

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 14-cv-01062-BNB

TYRONE WALKER,

Plaintiff,

v.

JOHN W. HICKENLOOPER, in his Individual Capacity,
BILL RITTER JR., in his Individual Capacity,
TOM CLEMENTS, in his Individual and Official Capacities,
ARISTEDES W. ZAVARAS, in his Individual and Official Capacities,
TONY CAROCHI, in his Individual and Official Capacities,
RICK RAEMISCH, in his Individual and Official Capacities,
KEVIN MILYARD, in his Individual and Official Capacities,
JAMES FALK, in his Individual and Official Capacities,
JOHN CHAPDELAINE #10277, in his Individual and Official Capacities,
JAMIE SOUCIE #12620, in her Individual and Official Capacities,
MARSHAL GRIFFITH #14298, in his Individual and Official Capacities,
JULIE FULLER #10068, in her Individual and Official Capacities,
ASTRIA LOMBARD #14539, in her Individual and Official Capacities, and
JANE DOE, in her Individual and Official Capacities,

Defendants.

ORDER

This matter arises in connection with my Order to Show Cause issued on July 8, 2014 [Doc. 24]. For the following reasons, defendant Tony Carochi is dismissed from this action.

The plaintiff filed his Amended Prisoner Complaint on May 7, 2014 [Doc. #6]. On June 6, 2014, the Clerk's Office sent a request for waiver of service to the defendants [Doc. #9]. On June 6, 2014, Teresa Reynolds, Legal Services Group Leader for the Colorado Department of Corrections ("DOC"), waived service for several defendants [Doc. #10]. Ms. Reynolds did not waive and accept service for defendant Tony Carochi. Ms. Reynolds explained that Mr. Carochi

is no longer a DOC employee. Ms. Reynolds provided a forwarding address for Mr. Carochi under seal [Doc. #12]. On June 23, 2014, the United States Marshal filed a Process Receipt and Return which states that the Marshal was unable to serve Mr. Carochi at the address provided by Ms. Reynolds because he is no longer living at that address [Doc. #20].

Consequently, I ordered the plaintiff to show cause why the Amended Complaint should not be dismissed as against defendant Tony Carochi for failure to prosecute. See D.C.COLO.LCivR 41.1. I warned the plaintiff that in the event no such showing was made, the action would be dismissed, without prejudice, as against Mr. Carochi for failure to prosecute.

On July 25, 2014, the plaintiff responded to the show cause order and provided two post office box addresses for Mr. Carochi. However, a defendant may not be personally served at a post office box address. The plaintiff argues that providing a request for waiver of service to Ms. Reynolds is adequate service for defendant Carochi in his official capacity. To the contrary, service on the defendant in his official capacity under the federal rules requires “serving a copy of each in the manner prescribed by that state’s law for serving a summons or like process on such a defendant.” Fed. R. Civ. P. 4(j). Under Colorado law, service on “an officer, agent, or employee of the state, acting in an official capacity” is accomplished by delivering a copy thereof to the officer, agent, or employee, and by delivering a copy to the attorney general.” Colo. R. Civ. P. 4(e)(10)(A). Mr. Carochi was not employed by the DOC at the time Ms. Reynolds received the request for waiver of service, and she had no authority to accept service for him.

The plaintiff has failed to show good cause why defendant Carochi should not be dismissed. Accordingly,

IT IS ORDERED that defendant Tony Carochi is DISMISSED WITHOUT PREJUDICE.

Dated September 4, 2014.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge