

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02851-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JAMES D. MANIER,

Plaintiff,

v.

[NO NAMED DEFENDANT],

Defendant(s).

ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCIES

Plaintiff, James Manier, is in the custody of the Colorado Department of Corrections at the Four Mile Correctional Center in Canón City, Colorado. Mr. Manier has filed, *pro se*, a Letter with the Court (ECF No. 1) asserting that the Colorado Board of Parole has failed to comply with his requests for information, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

The Court must construe Plaintiff's filing liberally because he is not represented by counsel. 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 does not act as a *pro se* litigant's advocate. See *Hall*, 935 F.2d at 1110.

Although the instant action has been commenced under 42 U.S.C. § 1983, Mr. Manier is warned that the allegations in his Letter do not suggest a federal cause of

action. Both the FOIA, see 5 U.S.C. §552(f), and the Privacy Act, see 5 U.S.C. § 552a(a)(1), apply only to federal agencies. See also *Trentadue v. F.B.I.*, 572 F.3d 794, 796 (10th Cir. 2009). The Colorado Board of Parole is not a federal agency.

If Mr. Manier intends to seek relief against the Colorado State Board of Parole for failure to comply with a Colorado public information act, his claim arises under state law, not 42 U.S.C. § 1983. See *West v. Atkins*, 487 U.S. 42, 48 (1988) (§ 1983 provides a federal cause of action for alleged violations of “a right secured by the Constitution and laws of the United States”). See also 28 U.S.C. § 1331 (federal court has original jurisdiction over civil actions arising under the Constitution or federal statutes). Plaintiff may not bring a state law claim in federal court unless he satisfies the requirements of the diversity jurisdiction statute, 28 U.S.C. § 1332.

On the other hand, if Mr. Manier intends to assert a federal cause of action, he must cure the deficiencies enumerated below. Any papers that Plaintiff files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner’s trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing certificate showing current balance in prison account
- (5) is missing required financial information
- (6) is missing authorization to calculate and disburse filing fee payments
- (7) is missing an original signature by the prisoner
- (8) is not on proper form
- (9) names in caption do not match names in caption of complaint, petition or habeas application
- (10) other: motion and supporting documents are necessary only if filing and administrative fees totaling \$400.00 filing fee are not paid.

Complaint, Petition or Application:

- (11) is not submitted

- (12) ___ is not on proper form (must use the court's current form)
- (13) ___ is missing an original signature by the prisoner
- (14) ___ is missing page nos. ___
- (15) ___ uses et al. instead of listing all parties in caption
- (16) ___ names in caption do not match names in text
- (17) ___ addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (18) ___ other: _____.

Accordingly, it is

ORDERED that Plaintiff cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Plaintiff files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that Plaintiff shall obtain the court-approved Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and Prisoner Complaint forms (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that, if Plaintiff fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED October 21, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge