

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS DANIEL CLARK,  
Plaintiff,  
v.  
MICHAEL MARTEL, Warden,  
Defendant.

No. C 11-3520 SI (pr)  
**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

**INTRODUCTION**

Douglas Daniel Clark, an inmate on death row at San Quentin State Prison, filed a *pro se* civil rights action under 42 U.S.C. § 1983. His complaint is now before the court for review under 28 U.S.C. § 1915A.

**BACKGROUND**

Clark filed a complaint in which he complained about restrictions on his inmate appeal activity. About a month later he filed another complaint, using the same case number, but this time complained about an improper use of chaplains. When he filed his second complaint, he sent with it a letter berating the court's handling of his first complaint. (Docket # 3.)



1 requires that he file an amended complaint that is a complete statement of all his claims. That  
2 way, the court will not have to guess as to Clark's intent.

3       Second, both complaints are long on anger and short on facts. Much of the text of each  
4 complaint is spent disparaging the prison officials with whom he disagrees. This kind of  
5 invective may make Clark feel better but fails to accomplish the purpose of a pleading, which  
6 is to provide a statement of one's claims to give the opponent notice and frame the dispute.  
7 Federal Rule of Civil Procedure 8(a)(2) requires that the complaint set forth "a short and plain  
8 statement of the claim showing that the pleader is entitled to relief." A complaint that fails to  
9 state the specific acts of the defendant which violated the plaintiff's rights fails to meet the notice  
10 requirements of Rule 8(a). *Hutchinson v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir.  
11 1982). Neither of Clark's complaints contains a short and plain statement of his claim showing  
12 his entitlement to relief. At the other end of the spectrum, Rule 8(d) requires that each allegation  
13 of a pleading be "simple, concise, and direct," and also may be the basis for dismissal. *McHenry*  
14 *v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was  
15 "argumentative, prolix, replete with redundancy, and largely irrelevant"). The complaints here  
16 do not comply with Rule 8(e). There are not simple, concise and direct averments, and instead  
17 the rambling pleadings have some facts intertwined with much legal argument and irrelevant  
18 surplusage. The amended complaint must comply with Rule 8.

19       Third, Clark must state each claim separately in his amended complaint. For each claim,  
20 he must allege the facts showing his entitlement to relief from the defendants. The amended  
21 complaint must identify (in each claim) each and every defendant who Clark proposes to hold  
22 liable on that claim. Clark must be careful to allege facts showing the basis for liability for each  
23 individual defendant. He should not refer to them as a group (e.g. "the defendants"); rather, he  
24 should identify each involved defendant by name and link each of them to his claim by  
25 explaining what each defendant did or failed to do that caused a violation of his constitutional  
26 rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on  
27 individual defendant under § 1983 only if plaintiff can show that defendant proximately caused  
28 deprivation of federally protected right). Clark is cautioned that there is no respondeat superior

1 liability under Section 1983, i.e. no liability under the theory that one is responsible for the  
2 actions or omissions of an employee. Liability under Section 1983 arises only upon a showing  
3 of personal participation by the defendant. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

4 If Clark wants to challenge a policy itself, rather than the way an acceptable policy is  
5 being applied to him, he may do so but needs to state clearly that is his desire. If he wants to  
6 challenge a policy, he should identify the specific policy, explain why defendant is responsible  
7 for the policy, and explain why it is unconstitutional. He also must allege facts to show he has  
8 standing to challenge the policy. The constitutional standing requirement derives from Article  
9 III, Section 2 of the United States Constitution, which restricts adjudication in federal courts to  
10 "Cases" and "Controversies." Article III standing is present only when (1) a plaintiff suffers a  
11 concrete, particularized injury which is actual or imminent; (2) there is a causal connection  
12 between the injury and the conduct complained of; and (3) the injury will likely be redressed by  
13 a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992);  
14 *Wedges/Ledges of California, Inc. v. City of Phoenix*, 24 F.3d 56, 61 (9th Cir. 1994).

15 Fourth, Clark may only assert claims for violations of his own rights. He has no standing  
16 to complain about problems that only harmed other inmates.

17 Fifth, the complaint concerning the administrative appeal limits does not state a claim for  
18 relief for denial of access to the courts because the complaint does not allege an actual injury.  
19 A constitutional right of access to the courts exists, but to establish a claim for any violation of  
20 the right of access to the courts, the prisoner must show that there was an inadequacy in the  
21 prison's legal access program that caused him an actual injury. *See Lewis v. Casey*, 518 U.S.  
22 343, 350-51 (1996). To prove an actual injury, the prisoner must show that the inadequacy  
23 hindered him in presenting a non-frivolous claim concerning his conviction or conditions of  
24 confinement. *See id.* at 355. Examples of impermissible hindrances include: a prisoner whose  
25 complaint was dismissed for failure to satisfy some technical requirement which, because of  
26 deficiencies in the prison's legal assistance facilities, he could not have known; and a prisoner  
27 who had "suffered arguably actionable harm" that he wished to bring to the attention of the  
28 court, but was so stymied by the inadequacies of the prison's services that he was unable even

1 to file a complaint. *See id.* at 351. In his amended complaint, Clark may attempt to plead a  
2 denial of access to the courts claim, but is cautioned that he must allege an actual injury to state  
3 a claim for relief.

4 Sixth, the claim concerning the limits on inmate appeals does not state a retaliation claim.  
5 If Clark wishes to assert a retaliation claim, he must allege the necessary elements. "Within the  
6 prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An  
7 assertion that a state actor took some adverse action against an inmate (2) because of (3) that  
8 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First  
9 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."  
10 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).

11 Seventh, Clark needs to allege his claim(s) about the improper use of chaplains more  
12 clearly. To establish a violation of the Free Exercise Clause of the First Amendment's right to  
13 freedom of religion, a prisoner must allege facts showing the defendants burdened the practice  
14 of his religion by preventing him from engaging in conduct mandated by his faith without any  
15 justification reasonably related to legitimate penological interests. *See Freeman v. Arpaio*, 125  
16 F.3d 732, 736 (9th Cir. 1997). For a claim under the Religious Land Use and Institutionalized  
17 Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1, the plaintiff-prisoner must allege facts showing  
18 that the government has imposed a substantial burden on his religious exercise.

19  
20 B. Miscellaney

21 Clark has complained in letters about court delays in processing some of his filings.  
22 Clark can increase the likelihood of timely processing of filings by taking these steps: (1)  
23 envelopes containing filings in a case should be addressed to the clerk of the court rather than  
24 to a particular judge or clerk for a particular judge, (2) mail should be sent to the court's San  
25 Francisco address (i.e., U.S. District Court, 450 Golden Gate Avenue, San Francisco, CA  
26 94102), and (3) each filing should have the case caption and case number clearly written on the  
27 first page.

28 Clark's *in forma pauperis* application will be ruled on in a separate order issued today.


1 The court notes that one of the two *in forma pauperis* applications Clark submitted had attached  
2 to it (i.e., docket # 4) several copies of a document entitled "Amended Complaint - This court's  
3 July 7, 2011 Order ignored the June 29-30 'filed' added complaint (Claim 3) Houston vs. Lack  
4 847 US 266" and bearing the case number for Case No. C 08-4224 SI. The court does not  
5 understand the purpose of the attachment: Case No. C 08-4224 SI was closed weeks before Clark  
6 signed the attachments to this document. The court will not order the document filed in Case  
7 No. C 08-4224 SI because (a) it was too late to file an amended complaint in that action because  
8 that action was closed weeks before docket # 4 was signed and (b) the text of docket # 4 does  
9 not appear to be an amended complaint but instead is a disappointed litigant's disparagement of  
10 the court. *See* paragraph "Second" above.

11  
12 **CONCLUSION**

13 For the foregoing reasons, the complaint is dismissed with leave to amend. The amended  
14 complaint must be filed no later than **December 23, 2011**, and must include the caption and civil  
15 case number used in this order and the words AMENDED COMPLAINT on the first page.  
16 Plaintiff is cautioned that his amended complaint must be a complete statement of his claims and  
17 will supersede existing pleadings. *See London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th  
18 Cir. 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are  
19 not alleged in the amended complaint.") Failure to file the amended complaint by the deadline  
20 will result in the dismissal of the action.

21 IT IS SO ORDERED.

22 Dated: November 8, 2011

23   
24 \_\_\_\_\_  
25 SUSAN ILLSTON  
26 United States District Judge  
27  
28