

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02657-BNB

DAVID L. COLLINS,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,  
CORRECTIONS CORPORATION OF AMERICA,  
ARISTEDES ZAVARAS,  
MERYL DOHRMANN,  
JAMES LANDER,  
J. D. SCOLLARD,  
MARISSA SCHNELL,  
SWARTZ,  
PUETT, and  
SARGENT JOHN DOE,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JAN 31 2009

**GREGORY C. LANGHAM**  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, David L. Collins, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Collins has filed *pro se* a civil rights complaint pursuant to 42 U.S.C. § 1983 (2006) and 28 U.S.C. § 1343(a)(3) (1993). He asks for money damages and for declaratory and injunctive relief.

Mr. Collins has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (2006). The Court must construe the complaint liberally because Mr. Collins 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 (10th Cir. 1991). However, the Court

should not be an advocate for a *pro se* litigant. **See Hall**, 935 F.2d at 1110. For the reasons stated below, Mr. Collins will be ordered to file an amended complaint.

The Court has reviewed Mr. Collins complaint and finds that the complaint fails to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Mr. Collins alleges that he is a convicted sex offender who has received an indeterminate sentence. He asserts four claims. The Court has done its best to summarize the claims as follows: (1) that the DOC's policy of placing convicted sex offenders in cells with gang members violates Mr. Collins' Eighth Amendment rights against cruel and unusual punishment; (2) that his transfer to a prison facility that does not offer sex offender treatment required for purposes of parole violates his due process rights; (3) that three defendant therapists placed his life in danger either by publicizing his sex-offender status to co-inmates or by transferring him to a facility where he was housed with white supremacist gang members in violation of his Eighth Amendment rights; and (4) that his placement in a pod with white supremacist gang members resulted in his assault by a co-inmate in violation of his Eighth Amendment rights.

The twin purposes of a complaint are to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief. **See Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass'n of Kansas**, 891 F.2d 1473, 1480 (10th Cir. 1989). The requirements of Fed. R. Civ. P. 8 are designed to meet these purposes. **See TV Communications Network, Inc. v.**

*ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992). Specifically, Rule 8(a) provides that a complaint “must contain (1) a short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1), which provides that “[e]ach allegation must be simple, concise, and direct.” Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

Mr. Collins’s claims are verbose and vague. In addition, he apparently expects the Court and the defendants to piece together the background provided in section “C. Nature of the Case” with the appropriate claim. As a result, he fails to set forth a short and plain statement of his claims showing that he is entitled to relief.

Mr. Collins will be directed to file an amended complaint asserting all of the claims he seeks to assert against all the defendants he plans to sue. Mr. Collins is advised that, in order to state a claim in federal court, his amended “complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant’s action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). Furthermore, 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, Mr. Collins 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 defendant may not be held liable on a theory of respondeat superior. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986); *McKee v. Heggy*, 703 F.2d 479, 483 (10th Cir. 1983). Accordingly, it is

ORDERED that Plaintiff, David L. Collins, file **within thirty (30) days from the date of this order** an amended complaint that complies with the directives of this order.

It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Collins , together with a copy of this order, two copies of the following form to be used in submitting the amended complaint: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Collins fails to file an amended complaint that complies with this order to the Court's satisfaction within the time allowed, the complaint and the action will be dismissed without further notice.

DATED January 21, 2009, 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. 08-cv-02657-BNB

David L. Collins  
Prisoner No. 122803  
Kit Carson Corr. Center  
PO Box 2000  
Unit EA107B  
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner Complaint form** to the above-named individuals on 1/21/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk