

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02658-BNB

RALPH MILLS,  
JULIA THEUS, and  
DONNA EMBRY,  
Plaintiffs,

v.

GERALD WITTMAN,  
OFFICER #1,  
OFFICER #2,  
OFFICER #3, and  
OFFICER #4,  
Defendants.

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

FEB 10 2009

**GREGORY C. LANGHAM**  
CLERK

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ORDER OF DISMISSAL

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Plaintiffs initiated this action by filing *pro se* a complaint. On December 16, 2008, Plaintiffs filed an amended complaint. On December 18, 2008, Magistrate Judge Boyd N. Boland ordered Plaintiffs to file a second amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. On January 5, 2009, Plaintiffs filed a second amended complaint.

The Court must construe the second amended complaint liberally because Plaintiffs are 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). Therefore, the second amended complaint is held to standards less stringent than those governing a formal pleading drafted by lawyers. *See id.* However, the Court should not be an advocate for *pro se* litigants. *See Hall*, 935 F.2d at 1110.

The Court has reviewed the second amended complaint and finds that it still fails to comply with the pleading requirements of Rule 8. The twin purposes of a pleading 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 (10<sup>th</sup> 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 (10<sup>th</sup> 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.

Plaintiffs fail to set forth a short and plain statement of the grounds for the Court’s jurisdiction. Although Plaintiffs made a general reference to the United States Constitution in their amended complaint, Plaintiffs do not refer to the Constitution in the second amended complaint and they do not claim specifically that their constitutional rights have been violated. Therefore, it no longer is clear whether the Court has jurisdiction over Plaintiffs’ claims in the second amended complaint.

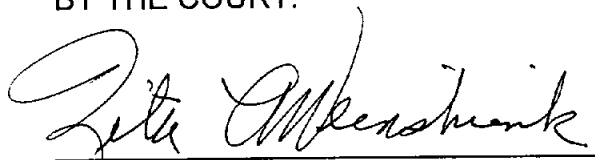
Plaintiffs also fail to set forth a short and plain statement of their claims showing that they are entitled to relief. As Magistrate Judge Boland advised Plaintiffs, in order “to state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; 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 (10<sup>th</sup> Cir. 2007). Despite this advisement, Plaintiffs fail to provide specific facts to support their claims and they fail to identify the specific legal rights that they believe have been violated.

A decision to dismiss a pleading pursuant to Rule 8 is within the Court’s sound discretion. **See Atkins v. Northwest Airlines, Inc.**, 967 F.2d 1197, 1203 (8<sup>th</sup> Cir. 1992); **Gillibeau v. City of Richmond**, 417 F.2d 426, 431 (9<sup>th</sup> Cir. 1969). The burden Plaintiffs place upon the Court and Defendants to identify, interpret, and respond to their claims is unreasonable. Therefore, the action will be dismissed for failure to comply with the pleading requirements of Rule 8. Accordingly, it is

ORDERED that the complaint, the amended complaint, the second amended complaint, and the action are dismissed without prejudice for failure to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.

DATED at Denver, Colorado, this 13 day of Feb., 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 08-cv-02658-BNB

Ralph Mills  
2323 Curtis St.  
Denver, CO 80205-2627

Julia Theus  
3636 W. Colfax  
Denver, CO 80204

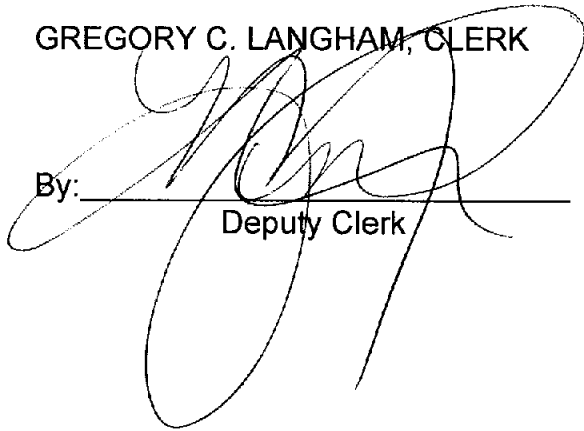
Donna Embry  
3636 W. Colfax  
Denver, CO 80204

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to each of the above-named individuals on 2/13/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. The text 'By: \_\_\_\_\_' and 'Deputy Clerk' are positioned below the line.