

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01972-BNB

JOSEPH J. FLEMING, Reg. No. 19956-047,

Plaintiff,

v.

FNU MNU CAMACHO, Physician Assistant,
FNU MNU CURTIS, Physician Assistant,
FNU MNU TERNANSKY, Correctional Officer,
FNU MNU JOHNSON, Food Service Worker,
FNU MNU SEARS, Food Service Worker, and
FNU MNU KELLAR, Physician Assistant,
(All Defendants being sued in their official and individual capacities, all being part of the
correctional staff at the prison complex at Florence, Colorado.)

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 25 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Joseph J. Fleming, is in the custody of the United States Bureau of Prisons and is currently incarcerated at the Florence Correctional Institution in Florence, Colorado. Mr. Fleming has filed a Prisoner Complaint pursuant to 42 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The Court must construe the Complaint liberally because Mr. Fleming is a *pro se* litigant. *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 act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110.

For the most part, Mr. Fleming appears to assert that Defendants were deliberately indifferent to his serious medical needs. For the reasons stated below, Mr.

Fleming will be ordered to file an Amended Complaint.

The Court has reviewed the Complaint filed by Mr. Fleming and finds that the Complaint does not comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. 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 Mr. Fleming 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. Fleming fails to set forth a short and plain statement of his claims showing that he is entitled to relief. Mr. Fleming's claims are repetitive and unnecessarily verbose. In addition, Rule 10.1 of the Local Rules of Practice for this Court requires

that all papers filed in cases in this Court be double-spaced and legible. **See** D.C.COLO.LCivR 10.1E. and G. The complaint filed by Mr. Fleming filed is difficult to read because it is single-spaced. Therefore, Mr. Fleming will be directed to file an Amended Complaint that complies with the pleading requirements of Rule 8. The amended complaint, whether handwritten or typed, shall be double-spaced and legible. Mr. Fleming is reminded that it is his responsibility to present his claims in a manageable format that allows the Court and Defendants to know what claims are being asserted and to be able to respond to those claims.

Mr. Fleming should also take note that he must assert each defendant's personal participation in the alleged constitutional violations. 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. Fleming 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 named defendant may not be held liable merely because of his or her supervisory position. **See *Pembaur v. City of Cincinnati***, 475 U.S. 469, 479 (1986); ***McKee v. Heggy***, 703 F.2d 479, 483 (10th Cir. 1983).

Mr. Fleming is instructed that to state a claim in this Court, he must state with specificity what each named defendant did to him, when they did it, how their action harmed him, and what specific legal right they violated. ***Nasious v. Two Unknown***

B.I.C.E. Agents, 492 F.3d 1158, 1163 (10th Cir. 2007). Accordingly, it is

ORDERED that Plaintiff, Joseph J. Fleming, file **within thirty 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. Fleming, together with a copy of this order, two copies of the Court-approved Prisoner Complaint form to be used in submitting the amended complaint. It is

FURTHER ORDERED that the amended complaint shall be titled "Amended Prisoner Complaint," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that if Mr. Fleming fails to file an amended complaint within the time allowed, the complaint and the action will be dismissed without further notice.

DATED September 25, 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. 09-cv-01972-BNB

Joseph J. Fleming
Reg No. 19956-041
FCI - Florence
P.O. Box 6000
Florence, CO 81226-6000

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner Complaint** to the above-named individuals on 9/25/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk