

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02022-BNB

JAY A. SCHELL,

Plaintiff,

v.

DR. PRITCHER, H.S.C.,
ARAPAHOE COUNTY DETENTION FACILITY, and
OTHER "HEALTH SERVICE REPS" AND MEDICAL STAFFS @ ABOVE AGENCY,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 30 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT

Plaintiff, Jay A. Schell, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Schell initiated this action by filing *pro se* two different versions of a Prisoner Complaint. On September 3, 2009, Mr. Schell filed an amended Prisoner Complaint. He asserts one claim for relief pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to his serious medical needs while he was incarcerated at the Arapahoe County Detention Facility.

The court must construe the amended complaint liberally because Mr. Schell 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. Schell will be ordered to file a second amended complaint if he wishes to pursue his claim.

The court has reviewed Mr. Schell's amended complaint and finds that it is deficient. First, it is not clear exactly who Mr. Schell is suing in this action. Although the Defendant identified as Dr. Pritcher is listed both in the caption of the amended complaint and in the description of the parties to this action on page two of the amended complaint, none of the other Defendants listed in the caption of the amended complaint are identified as Defendants anywhere else in the amended complaint. It also is not clear exactly who is being named as a Defendant in the caption of the amended complaint because Mr. Schell fails to list each Defendant on a separate line. Therefore, Mr. Schell will be directed to file a second amended complaint that clarifies who he is suing.

Mr. Schell is advised that, pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, "[i]n the complaint the title of the action shall include the names of all the parties." Therefore, Mr. Schell should identify each Defendant in the caption of the second amended complaint he will be ordered to file. Pursuant to Rule 10.1J. of the Local Rules of Practice of the United States District Court for the District of Colorado-Civil, "[p]arties shall be listed in a caption with one party per line. The proper name of a party shall be in capital letters, and any identifying text shall be in upper and lower case immediately following the proper name." Finally, Mr. Schell is advised that § 1983 "provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights." *Conn v. Gabbert*, 526 U.S. 286, 290 (1999). Therefore, Mr. Schell should name as Defendants in the second amended complaint the persons he believes actually violated his constitutional rights.

Mr. Schell also must clarify in his second amended complaint the specific claim

for relief he is asserting against each Defendant and he must allege specific facts that demonstrate how each Defendant personally participated in the asserted violation of his rights. Although Mr. Schell alleges generally that he endured deliberate indifference to his serious medical needs, he fails to provide specific factual allegations in support of his claim. In other words, he fails to specify how each Defendant was deliberately indifferent to his serious medical needs. The general rule that *pro se* pleadings must be construed liberally has limits and “the court cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). In order to state a claim in federal court, Mr. Schell “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). Accordingly, it is

ORDERED that Mr. Schell file **within thirty (30) days from the date of this order** a second amended complaint that complies with this order if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Schell, together with a copy of this order, two copies of the following form: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Schell fails to file a second 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 September 30, 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-02022-BNB

Jay A. Schell
Reg No. 122066
DRDC
P.O. Box 392004 - Unit 4-B
Denver, CO 80239-8004

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 9/30/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk