

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01496-BNB

JEFFERY T. ALLEN,

Plaintiff,

v.

THE BOULDER SHELTER FOR THE HOMELESS, and
GREG HARMS, Acting Agent, Executive Director,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Jeffery T. Allen, has filed *pro se* a Complaint (ECF No. 1) and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3). The Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be granted.

Pursuant to § 1915(e)(2)(B)(i), the Court must dismiss the action if Mr. Allen's claims are frivolous or malicious. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). For the reasons stated below, the Court will dismiss the action as legally frivolous and malicious.

The Court must construe the Complaint liberally because Mr. Allen 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). If the Complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, [the Court] should do so

despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Hall*, 935 F.2d at 1110. However, the Court should not be an advocate for a *pro se* litigant. *See id.*

Mr. Allen's Complaint in this action is one of three lawsuits initiated by Mr. Allen at the same time that substantively are identical. *See Allen v. Boulder Shelter for the Homeless*, No. 13-cv-01497-BNB (D. Colo. filed June 12, 2013); *Allen v. Boulder Shelter for the Homeless*, No. 13-cv-01498-BNB (D. Colo. filed June 12, 2013). Mr. Allen provides no explanation for filing three lawsuits at the same time raising the same claims against the same Defendants. He also provides no explanation for filing these three actions just five days after filing another lawsuit raising the same claims against the same Defendants. *See Allen v. Boulder Shelter for the Homeless*, No. 13-cv-01475-BNB (D. Colo. filed June 7, 2013). In case number 13-cv-01475-BNB, Mr. Allen has been ordered to file an amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.

"Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious." *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). To determine whether a pleading repeats pending or previously litigated claims, the Court may consult its own records. *See Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972). The Court has consulted its records and finds that the instant action is repetitive of case number 13-cv-01475-BNB. Even assuming there is some minor difference between this action and case number 13-cv-01475-BNB, Mr. Allen may include in the amended complaint he

has been ordered to file in case number 13-cv-01475-BNB all of the claims he wishes to assert against Defendants. See Fed. R. Civ. P. 18(a).

The instant action will be dismissed as legally frivolous and malicious because it is repetitive of case number 13-cv-01475-BNB. In addition, Mr. Allen is warned that the Court can and will impose appropriate sanctions if he persists in engaging in abusive litigation tactics.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3) is granted. It is

FURTHER ORDERED that the Complaint and the action are dismissed as legally frivolous and malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 13th day of June, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court