

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01727-BNB

RONNIE VAUGHN,

Plaintiff,

v.

D. BERKEBILE, Warden, Federal Bureau of Prisons, and
RANGEL, Unit Manager, Federal Bureau of Prisons,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Ronnie Vaughn, is in the custody of the Federal Bureau of Prisons and is incarcerated at the ADX in Florence, Colorado. He has filed *pro se* two identical Prisoner Complaints for money damages pursuant to ***Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics***, 403 U.S. 388 (1971). Mr. Vaughn has been granted leave to proceed pursuant to 28 U.S.C. § 1915 with payment of an initial partial filing fee.

The Court must construe liberally the Complaint because Mr. Vaughn 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. Vaughn will be directed to file an amended complaint.

The Court has reviewed Mr. Vaughn's Complaint and finds that it 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 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). 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." Prolix, vague, or unintelligible pleadings violate Rule 8.

Moreover, in order for Mr. Vaughn to state a claim in federal court, his "complaint must explain what each defendant did to him . . . ; when the defendant did it; how the defendant's action harmed him . . . ; 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).

Mr. Vaughn's handwriting is difficult to read and, as a consequence, the Court cannot discern most of his allegations. 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 Court can ascertain from the Complaint only

that Plaintiff is alleging that the Defendants failed to follow BOP administrative regulations in connection with providing him a copy of the report of the Disciplinary Hearing Officer (DHO) and refused to reinstate Plaintiff to a step-down program after his incident report was expunged by the DHO.

As a result of his generally illegible handwriting, Mr. Vaughn fails to provide “a generalized statement of the facts from which the defendant may form a responsive pleading.” *New Home Appliance Ctr., Inc., v. Thompson*, 250 F.2d 881, 883 (10th Cir. 1957). For the purposes of Rule 8(a), “[i]t is sufficient, and indeed all that is permissible, if the complaint concisely states facts upon which relief can be granted upon any legally sustainable basis.” *Id.*

Mr. Vaughn must present his claim or claims in a manageable and readable format that allows the Court and the defendants to know what claims are being asserted and to be able to respond to those claims. Mr. Vaughn must make legible allegations of his specific claims for relief, including the specific rights that allegedly have been violated and the specific acts of each defendant that allegedly violated his rights. 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 the amended complaint he will be directed to file, Mr. Vaughn also must assert personal participation by each named defendant. *See Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Mr. Vaughn

must demonstrate how each named defendant caused a deprivation of his federal rights. **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). Supervisors can only be held liable for their own misconduct. **See *Ashcroft v. Iqbal***, 556 U.S. 662, 676 (2009). A supervisor cannot incur liability under § 1983 for his mere knowledge of a subordinate's wrongdoing. ***Id.***; **see also *Fogarty v. Gallegos***, 523 F.3d 1147, 1162 (10th Cir. 2008) (“[Section] 1983 does not recognize a concept of strict supervisor liability; the defendant’s role must be more than one of abstract authority over individuals who actually committed a constitutional violation.”).

Lastly, the amended complaint Mr. Vaughn will be directed to file, whether handwritten or typed, shall be double-spaced and legible, in capital and lower-case letters, in compliance with D.C.COLO.LCivR 10.1E. and G.

A decision to dismiss a complaint pursuant to Rule 8 is within the trial court’s sound discretion. **See *Atkins v. Northwest Airlines, Inc.***, 967 F.2d 1197, 1203 (8th Cir. 1992); ***Gillibeau v. City of Richmond***, 417 F.2d 426, 431 (9th Cir. 1969). The Court finds that the complaint does not meet the requirements of Fed. R. Civ. P. 8 and D.C.COLO.LCivR 10.1. Mr. Vaughn will be given an opportunity to cure the deficiencies in his complaint by submitting an amended complaint that states his claims clearly and concisely in compliance with Fed. R. Civ. P. 8, is written legibly in compliance with D.C.COLO.LCivR 10.1, and alleges specific facts that demonstrate how each named

defendant personally participated in the asserted constitutional violations. Accordingly, it is

ORDERED that Plaintiff, Ronnie Vaughn, **within thirty (30) days from the date of this order**, file an amended complaint that complies with this order. It is

FURTHER ORDERED that Mr. Vaughn (with the assistance of his case manager of the facility's legal assistant) shall obtain a copy of the court-approved Prisoner Complaint form, along with the applicable instructions, at www.cod.uscourts.gov. It is

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

DATED July 10, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge