

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02440-GPG

JOSEPH WAYNE WARD,

Plaintiff,

v.

STANLEY GARNETT,
INGRID S. BAKKE,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Joseph Wayne Ward, is a prisoner currently incarcerated at the Crowley Correctional Facility in Olney Springs, Colorado. He has filed *pro se* a Prisoner Complaint (ECF No. 4) pursuant to 42 U.S.C. § 1983. The court must construe the Complaint liberally because Mr. Ward 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. Ward will be ordered to file an amended prisoner complaint.

The Prisoner Complaint is deficient because 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). 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 Rule 8.

Mr. Ward’s claims are difficult to understand but appear to involve his conviction in Boulder County District Court case 03CR001277. Instead of providing a short and plain statement of his claims, Mr. Ward has attached copies of court documents he apparently filed in Boulder County District Court asserting claims against Stanley L. Garnett, the District Attorney. His stated claims are: (1) “violation of oath of office: denial of due process, USCA V”; (2) “breach of fiduciary duty: denial of equal protection, USCA XIV”; and (3) “breach of contract between the parties: 28 U.S.C. § 241, conspiracy against rights.”

The Prisoner Complaint fails to set forth a short and plain statement of his claims showing he is entitled to relief because he fails to allege facts that demonstrate what each Defendant did that allegedly violated his constitutional rights and he does not specify against which Defendant or Defendants he is asserting his claims.

Vague and conclusory allegations that his federal constitutional rights have been violated do not entitle a *pro se* pleader to a day in court regardless of how liberally the court construes such pleadings. See *Ketchum v. Cruz*, 775 F. Supp. 1399, 1403 (D. Colo. 1991), *aff'd*, 961 F.2d 916 (10th Cir. 1992). 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). Thus, “in analyzing the sufficiency of the plaintiff’s complaint, the court need accept as true only the plaintiff’s well-pleaded factual contentions, not his conclusory allegations.” *Hall*, 935 F.2d at 1110.

Mr. Ward will be directed to file an amended complaint that identifies the specific factual allegations that support each claim, against which Defendant or Defendants he is asserting each claim, and what each Defendant did that allegedly violated his rights. See *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (noting that, 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”). The court emphasizes that allegations of “personal participation in the specific constitutional violation complained of [are] essential.” *Henry v. Storey*, 658 F.3d 1235, 1241 (10th Cir. 2011).

Mr. Ward 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). However, Mr. Ward may not assert any

claims for damages that are barred by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994). Pursuant to *Heck*, if a judgment necessarily would imply the invalidity of a criminal conviction or sentence, the action does not arise until the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by the issuance of a federal habeas writ. See *Heck*, 512 U.S. at 486-87.

Mr. Ward also is advised that judges are absolutely immune from liability in civil rights suits for money damages for actions taken in their judicial capacity unless the judge was acting in the clear absence of all jurisdiction. See *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *Hunt v. Bennett*, 17 F.3d 1263, 1266-67 (10th Cir. 1994). Similarly, “acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his [or her] role as an advocate for the State, are entitled to the protections of absolute immunity.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993).

Finally, Mr. Ward is instructed to set forth a short and plain statement of his claims asserting the necessary facts in the Prisoner Complaint instead of attaching state court documents as the supporting facts. Accordingly, it is

ORDERED that Mr. Ward file, **within thirty (30) days from the date of this order**, an amended prisoner complaint as directed in this order. It is

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

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

DATED December 17, 2015, at Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink, consisting of a series of connected, fluid strokes that form a stylized, somewhat abstract shape.

Gordon P. Gallagher
United States Magistrate Judge