

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

September 16, 2025

Christopher M. Wolpert
Clerk of Court

CLARENCE WAYNE SEELEY, III,

Plaintiff - Appellant,

v.

BRIAN WHITNEY, State Official;
ALEXANDER DUNCAN, State Official;
RAYMOND ALLEN, State Official;
NIKEA TANISHA BLAND, State
Official; IDRIS CHAMBERS; DOLORES
MARTINEZ,

Defendants - Appellees.

No. 25-1031
(D.C. No. 1:24-CV-01013-LTB-STV)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **TYMKOVICH**, and **MORITZ**, Circuit Judges.

Clarence Seeley III was arrested and held in jail on state charges for about six months, until the prosecution dismissed the case. He sued under 42 U.S.C. § 1983 for damages from his arrest and detention. After giving Mr. Seeley two opportunities to amend his complaint, the district court dismissed under Fed. R. Civ. P. 41(b) for

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

(eg., APPENDIX A)

failure to comply with Fed. R. Civ. P. 8. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

The magistrate judge issued two orders identifying deficiencies in Mr. Seeley's pleadings and directing him to amend to bring his complaint into compliance with Rule 8(a). The operative pleading is the second amended complaint Mr. Seeley filed in response to the second order (Dist. Ct. ECF No. 30).

The second amended complaint named as defendants two state judges, a prosecutor, a sheriff's deputy, and two witnesses. For Claim One, Mr. Seeley alleged "Violation of the 14th Const. Amendment Due Process Clause/Equal Protection Clause Negligence/Malicious Prosecution/False Arrest/Imprisonment." R. at 92 (capitalization modified). For Claim Two, he alleged "Violation of the 4th Const Amendment Preliminary Hearing/Probable Cause/Illegal Search & Seizure." *Id.* After listing both claims and identifying which defendants were named in connection with which claim, the second amended complaint had a paragraph (a half-page of text) containing all supporting allegations for both claims.

The magistrate judge recommended the district court dismiss the second amended complaint without prejudice under Rule 41(b) because Mr. Seeley failed to satisfy Rule 8. Stating that the allegations were "vague, unclear, conclusory, and difficult to follow," R. at 102, the magistrate judge determined that Mr. Seeley had "failed to explain, in a clear, concise, and understandable way, what each defendant did to him; when the defendant did it; how the defendant's action harmed him; and

what specific legal right [he] believes the defendant violated.” R. at 103 (ellipses and internal quotation marks omitted). Over Mr. Seeley’s objections, the district court adopted the recommendation and dismissed the second amended complaint and the action without prejudice.¹

DISCUSSION

“We review dismissals under Rule 41(b) for abuse of discretion.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007). Because Mr. Seeley proceeds pro se, we liberally construe his filings, but we do not act as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

Under Rule 8, a complaint must set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 41(b) authorizes the involuntary dismissal of an action or claim “[i]f the plaintiff fails to . . . comply with” the Federal Rules of Civil Procedure “or a court order.” Fed. R. Civ. P. 41(b). Rule 41(b) “has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to . . . comply with the rules of civil procedure or court’s orders.” *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003). A district court need not employ “any particular procedures” to dismiss without prejudice pursuant to Rule 41(b). *Nasious*, 492 F.3d at 1162.

¹ The district court dismissed the action as well as the complaint, so although the dismissal was without prejudice, it is a final, appealable decision. *See Moya v. Schollenbarger*, 465 F.3d 444, 449 (10th Cir. 2006).

The Supreme Court has explained:

[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (brackets, citations, and internal quotation marks omitted)). To satisfy Rule 8, therefore, “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.” *Nasious*, 492 F.3d at 1163. “[T]hese are, very basically put, the elements that . . . permit[] the defendant sufficient notice to begin preparing its defense and the court sufficient clarity to adjudicate the merits.” *Id.*

The district court did not abuse its discretion in dismissing Mr. Seeley’s action because the second amended complaint did not satisfy these standards. It sets forth some factual allegations, but primarily it presents conclusory assertions. Even construed liberally, the second amended complaint does not explain what happened with sufficient clarity to enable the district court to proceed with the case.

Mr. Seeley asserts that he satisfied the requirement to describe “who/what/when/where/how/why,” Aplt. Opening Br. at 3 (capitalization modified), by identifying the state-court case number, which the district court could look up, and then later by providing documents listing the procedural actions taken in the state-court case (i.e., a docket sheet or register of actions). But the district court was

not required to act as Mr. Seeley's advocate by locating or cross-referencing documents from another case to infer the grounds for his claims. *See Garrett*, 425 F.3d at 840 ("[A]lthough we make some allowances for the pro se 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, the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." (brackets, citation, and internal quotation marks omitted)).

Mr. Seeley also states that the district court did not address his Claim Two. He is correct that the magistrate judge apparently overlooked that he sought to pursue two claims. But the error is harmless because Claim Two suffers from the same deficiencies as Claim One. The two headings for the claims were followed by one block of text that was insufficient to support either claim.

Finally, Mr. Seeley argues that the magistrate judge improperly presided without his consent. *See* 28 U.S.C. § 636(c). He is mistaken. The magistrate judge did not preside over the case. He screened Mr. Seeley's pleadings pursuant to the district court's local rules, *see* D.C.Colo.LCivR 8.1, and directed the clerk to assign it to a district judge. The district judge referred the matter to the magistrate judge for a recommendation, which the magistrate judge provided. It was the district judge who made the final decision to dismiss Mr. Seeley's action.

CONCLUSION

We affirm the judgment. We deny Mr. Seeley's motions for oral argument, for a court-ordered investigation, and for injunctive relief.²

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

² The motions for a court-ordered investigation and for injunctive relief challenge Mr. Seeley's current conditions of confinement, which are beyond the scope of this litigation.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-01013-LTB-STV

CLARENCE WAYNE SEELEY III,

Plaintiff,

v.

BRIAN WHITNEY, State Official,
ALEXANDER DUNCAN, State Official,
RAYMOND ALLEN, State Official,
NIKEA TANISHA BLAND, State Official,
IDRIS CHAMBERS,
DOLORES MARTINEZ,

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge filed on December 13, 2024. (ECF No. 34). Plaintiff has filed timely written objections to the Recommendation. (ECF Nos. 35, 36, 39, 40). The Court has therefore reviewed the Recommendation *de novo* in light of the file and record in this case. On *de novo* review the Court concludes that the Recommendation is correct.

Accordingly, for the foregoing reasons, it is

ORDERED that Plaintiff's objections (ECF Nos. 35, 36, 39, 40) are overruled. It is

FURTHER ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 34) is accepted and adopted. It is

FURTHER ORDERED that the Second Amended Prisoner Complaint (ECF No. 30) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the pleading requirements of Rule 8. 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. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 10th day of January, 2024.

BY THE COURT:

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-01013-LTB-STV

CLARENCE WAYNE SEELEY III,

Plaintiff,

v.

BRIAN WHITNEY, State Official,
ALEXANDER DUNCAN, State Official,
RAYMOND ALLEN, State Official,
NIKEA TANISHA BLAND, State Official,
IDRIS CHAMBERS,
DOLORES MARTINEZ,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Entered by Magistrate Judge Scott T. Varholak

This matter comes before the Court on the Second Amended Prisoner Complaint filed *pro se* by Plaintiff Clarence Wayne Seeley III on November 8, 2024. (ECF No. 30).

The matter has been referred to this Magistrate Judge for recommendation. (ECF No. 33).¹

¹ Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive, or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir.

The Court must construe the Second Amended Prisoner Complaint liberally because Plaintiff 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.

The Court has reviewed the filings to date. The Court has considered the case file and the applicable law, and is sufficiently advised in the premises. It is respectfully recommended that the Second Amended Prisoner Complaint be dismissed.

I. BACKGROUND

Plaintiff is a prisoner in the custody of the Colorado Department of Corrections. He commenced this action *pro se* on April 15, 2024 (ECF No. 1), and on June 24, 2024 he filed a Prisoner Complaint (ECF No. 18). On August 8, 2024, the Court ordered Plaintiff to file an Amended Prisoner Complaint. (ECF No. 22). On August 20, 2024, Plaintiff filed an Amended Prisoner Complaint. (ECF No. 23). On October 7, 2024, the Court ordered Plaintiff to file a Second Amended Prisoner Complaint which complies with Rule 8 of the Federal Rules of Civil Procedure. (ECF No. 24). Plaintiff filed a Second Amended Prisoner Complaint on November 7, 2024 (ECF No. 29) followed by what appears to be a duplicate of that Second Amended Prisoner Complaint on November 8, 2024 (ECF No. 30). The November 8, 2024, Second Amended Prisoner Complaint (ECF No. 30) is the operative pleading in this action.

1991).

II. ANALYSIS

Plaintiff brings this action under 42 U.S.C. § 1983. (ECF No. 30 at 4). He pleads one claim for relief, which is entitled, "Violation of the 14th Const. Amendment Due Process Clause / Equal Protection Clause Negligence / Malicious Prosecution / False Arrest / Imprisonment." (*Id.* at 5). He names as defendants Brian Whitney, a Colorado state court judge; Alexander Duncan, a Colorado state prosecutor; Raymond Allen, a Sheriff Deputy; Nikea Tanisha Bland, a Colorado state court judge; Idris Chambers; and Dolores Martinez. The pleading appears to refer, at least in part, to Plaintiff's arrest and state criminal proceedings. However, Plaintiff's allegations are vague, unclear, conclusory, and difficult to follow. As Plaintiff was advised in the order to amend, vague and conclusory allegations that his 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 twin purposes of a pleading 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); see also *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (stating that 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 requirements of Rule 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." Furthermore, 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. As a result, vague or unintelligible pleadings violate the requirements of Rule 8.

Plaintiff has failed to provide a short and plain statement of any claim showing he is entitled to relief. His allegations are vague, confusing, and in large part unintelligible. He has failed to explain, in a clear, concise, and understandable way, "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*, 492 F.3d at 1163. 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). "[I]n 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. Plaintiff's pleading does not comply with Rule 8, and thus the action properly is dismissed without prejudice.

III. RECOMMENDATION

For the reasons set forth herein, it is respectfully

RECOMMENDED that the Second Amended Prisoner Complaint (ECF No. 30) and the action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the pleading requirements of Rule 8.

DATED December 13, 2024.

BY THE COURT:

s/ Scott T. Varholak
Scott T. Varholak
United States Magistrate Judge

**Additional material
from this filing is
available in the
Clerk's Office.**