

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-00166-WJM-NYW

TAMMY FISHER

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department in his official and individual capacity;
LUKE HECKER, Chief of Loveland Police Department, in his official and individual capacity,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT**

Plaintiff, by and through the undersigned counsel, hereby submits this Motion for Leave to File First Amended Complaint, and in support thereof states:

BACKGROUND

Plaintiff filed her Complaint in this case on January 9, 2015 in the Larimer County District Court. Thereafter, Defendants filed their Notice of Removal to the federal district court (doc. # 1, filed January 23, 2015).

Defendant's filed their Answer on February 19, 2015 (doc. # 21).

Plaintiff has not previously asked to amend her Complaint. The amendments sought are primarily two-fold, to add an additional claim pursuant to the Fourth Amendment to the U.S. Constitution and to add a defendant.

ARGUMENT

Under Rule 15 of the Federal Rules of Civil Procedure, a Plaintiffs may amend her Complaint once as a matter of course within 21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleadings only with the opposing party’s written consent or the courts leave.” Fed. R. Civ. P. 15(a)(2). In this matter, Defendants’ have filed their Answer and have not consented to the Amendment sought herein; therefore, Plaintiff must seek the Court’s leave to amend her complaint.

Pursuant to federal Rule of Civil Procedure 15(a), “The court should freely give leave [to amend the pleadings] when justice so requires.” *See York v. Cherry Creek Sch. Dist. No. 5*, 232 F.R.D. 648, 649 (D. Colo. 2005); *Aspen Orthopedics & Sports Medicine, LLC v. Aspen Valley Hosp. Dist.*, 353 F.3d 832, 842 (10th Cir. 2003). The grant or denial of an opportunity to amend is within the discretion of the court, but “outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Refusing leave to amend is generally only justified upon a showing of undue delay. Undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously

allowed, or futility of amendment.” *Frank v. U.S. West, Inc.*, 3 F.3d 1357, (10th Cir. 1993).

A. Good Cause

There is good cause to allow the Plaintiff to amend her Complaint. Since the filing of the original complaint, Plaintiff has been made more fully aware of a pending criminal investigation involving Defendant Koopman in his employ with the City of Loveland Police Department. Also since the original filing, Plaintiff has been interviewed by the Weld County District Attorney. The requested amendments are reflective of the new information.

B. Undue Prejudice

The sought for amendments are an integral part of the claims originally made. The added Defendant also has been an integral part of the original complaint in that under Colorado law, it has a duty to defend Defendants Koopman and Hecker. There would be no undue difficulty in prosecuting or defending the lawsuit as a result of a change of tactic or theories based on the amendments.

C. Undue Delay, Bad Faith or Dilatory Move

This case is at the beginning of the discovery stage. There is no effort on Plaintiff’s part of bad faith in seeking to amend or intent to cause unnecessary delay. The amendments are sought prior to the deadline as set forth in the Scheduling Order (doc. # 27, filed 4/8/15).

D. Futility

Amendment of a complaint can be denied if the amendment sought would be futile. A proposed amendment is futile if the complaint, as amended, would be subject to

dismissal.

Plaintiff's proposed Amended Complaint makes similar factual and legal allegations to those made in the original complaint and applies those allegations to an additional claim and an additional defendant.

CONCLUSION

None of the reason for denying leave to amend under Rule 15 exist in this case, and, therefore, leave to amend should be granted.

WHEREFORE, Plaintiff respectfully requests that this Court grant this Motion for Leave to File First Amended Complaint (filed with this motion) for filing, and any other relief this Court deems proper and just.

Dated: May 20, 2015

Respectfully submitted,

/s/Randall R. Meyers
Randall R. Meyers, #009854
425 W. Mulberry, Suite 201
Fort Collins, CO 80521
(970) 472-0140

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this day of, I electronically filed the foregoing Scheduling Order with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Attorneys for Defendants Brian Koopman, Luke Hecker
Marni Nathan Kloster
NATHAN, BREMER, DUMM & MYERS, P.C.
7900 E. Union Avenue, Suite 600
Denver, CO 80237-2776
Phone Number: (303) 691-3737
Email: mnathan@nbdmlaw.com

And I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the non-participants name:

N/A

s/ Patricia Ortiz
Patricia Ortiz