

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 08-cv-01053-REB-KMT

STANLEY E. JONES,

Plaintiff,

v.

TWO UNKNOWN DOC GUARDS, a/k/a
SGT. T. COOK and
COWORKER,

Defendants.

ORDER

This matter is before the court on “Plaintiff’s Renewed Motion for Leave to Amend Caption to Reflect Name of Unknown Defendant and Have Defendant Served with Civil Rights Complaint Pursuant to Fed. R. Civ. P. 15(a)” (Doc. No. 44, filed November 17, 2009).

Defendant Cook opposes this motion because Plaintiff did not attach the Proposed Amended Complaint to his Motion to Amend. (Doc. No. 47.) Defendant also argues that Plaintiff has failed to assert any facts or allegations against the proposed new defendant, James Keller. (*Id.*)

The Local Rules do not require plaintiffs to attach a Proposed Amended Complaint to their Motion to Amend. D.C.Colo.LCivR. 7.1. *Cf. Navis v. Via Christi Reg’l Med. Ctr.*, No. 032568, 1004 WL 1004827 (D. Kan. April 20, 2004) (applying D. Kan. R. 15.1(a), which requires a proposed amended complaint to be attached to the motion to amend).

Plaintiff clearly wishes only to substitute the unknown “Coworker” defendant with the name of the proper defendant whose name he states was revealed in discovery. The court finds no basis for denying the motion, considering the liberal standard for allowing amendment set forth in Fed. R. Civ. P. 15(a). The court should grant leave to amend a complaint “freely . . . when justice so requires.” Fed. R. Civ. P. 15(a)(2). Leave to amend should only be denied when the moving party unduly delayed, failed to amend despite ample opportunity to do so, the nonmoving party would be unduly prejudiced, or amendment would be futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Plaintiff’s motion is timely, and no previous amendments have been sought. Further, the court can discern no prejudice to Defendant Cook if amendment is permitted. Finally, Defendant has not asserted a futility argument. Accordingly,

Plaintiff’s Motion is GRANTED. The case caption shall be amended to add Defendant James Keller and to delete Defendant “Coworker.” The court will issue a separate order for the United States Marshal Service to serve Defendant Keller with a copy of the Summons and Complaint, along with a copy of this Order.

Dated this 20th day of November, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kathleen M. Tafoya", written in a cursive style.

Kathleen M. Tafoya
United States Magistrate Judge