

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-02138-WYD-BNB

WILLIAM WILSON,

Plaintiff,

v.

CITY OF AURORA, Colorado, a municipality,
DANIEL OATES, Chief of the Aurora Police Department, in his individual capacity
RICKY BENNETT, Former Chief of the Aurora Police Department, in his individual capacity
TERRY JONES, Former Acting Chief of the Aurora Police Department, in his individual
capacity
KENNETH HAITHCOAT, Former Detective in the Aurora Police Department, in his individual
capacity
PAT (I) SMITH, in his individual capacity
PAT SMITH, Sergeant in the Aurora Police Department, in his official capacity
STEVEN (I) COX, in his individual capacity
STEVEN COX, Detective in the Aurora Police Department, in his official capacity
CAROL CHAMBER, district Attorney of the Eighteenth Judicial District, in her official capacity
CAROLYN O'HARA, Formal Deputy District Attorney of the Eighteenth Judicial District, in
his individual capacity
JIM PETER, Former District Attorney of the Eighteenth Judicial District, in his individual
capacity
EIGHTEENTH JUDICIAL DISTRICT of COLORADO, political subdivision of the State of
Colorado
BOARD OF COUNTY COMMISSIONERS of ARAPAHOE COUNTY, a political subdivision
of the State of Colorado
and ARAPAHOE COUNTY, COLORADO, a county

Defendants.

ORDER

This matter arises on the following motions:

1. **Board of County Commissioners of Arapahoe County's and Arapahoe County's**

Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) [Doc. #39, filed 10/20/2009];

2. **Motion for Summary Judgment of Defendants Chambers, Peters and O'Hara** [Doc. #42, filed 10/23/2009];
3. **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) of Defendant Pat Smith, in His Individual Capacity, with Authority** [Doc. #45, filed 10/30/2009];
4. **Defendants City of Aurora, and Daniel Oates, Pat Smith and Steven Cox in their Official Capacities Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) with Authority** [Doc. #47, filed 10/30/2009];
5. **Joint Motion to Dismiss Individual Aurora Defendants Based on Qualified Immunity** [Doc. #51, filed 10/30/2009]; and
6. **Plaintiff's Motion to File Amended Complaint** [Doc. #60, filed 11/10/2009].

The plaintiff filed his initial Complaint on September 8, 2009 [Doc. #1]. The defendants filed dispositive motions in response to the Complaint. No defendant has filed an answer.

The plaintiff seeks leave to file an amended complaint in order to clarify his claims and to clarify facts pertaining to the statute of limitations. Rule 15, Fed. R. Civ. P., provides that a complaint may be amended once as a matter of course if a responsive pleading has not been served. Fed. R. Civ. P. 15(a)(1)(A). Under Rule 7(a), Fed. R. Civ. P., pleadings include a complaint and an answer. The defendants' dispositive motions are not responsive pleadings. See Cooper v. Shumway, 780 F.2d 27, 29 (10th Cir. 1985). Therefore, the plaintiff's motion to amend is granted.

The defendants' dispositive motions are all directed to the initial Complaint which is no longer extant. Accordingly, the dispositive motions are denied without prejudice. The defendants may reassert their arguments, if necessary, in response to the amended complaint.

IT IS ORDERED that Plaintiff's Motion to File Amended Complaint [Doc. #60] is GRANTED.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to accept the Amended Complaint and Jury Demand [Doc. # 60-2] for filing.

IT IS FURTHER ORDERED that the following motions are DENIED WITHOUT PREJUDICE:

(1) Board of County Commissioners of Arapahoe County's and Arapahoe County's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) [Doc. #39];

(2) Motion for Summary Judgment of Defendants Chambers, Peters and O'Hara [Doc. #42];

(3) Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) of Defendant Pat Smith, in His Individual Capacity, with Authority [Doc. #45];

(4) Defendants City of Aurora, and Daniel Oates, Pat Smith and Steven Cox in their Official Capacities Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) with Authority [Doc. #47];
and

(5) Joint Motion to Dismiss Individual Aurora Defendants Based on Qualified Immunity [Doc. #51].

Dated November 19, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge