

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

Civil Action No. 10-cv-00188-PAB-BNB

LORI L. PARK,
Plaintiff,

v.

TD AMERITRADE TRUST COMPANY, INC.,
TD AMERITRADE, INC., and
TD AMERITRADE TRUST COMPANY CORPORATION,

Defendants.

ORDER

This matter arises on a paper filed by the plaintiff entitled “Memorandum of Law in Support of Motion for Leave to File Plaintiff’s Amended Complaint” [Doc. #10, filed 03/24/2010] (the “Motion”). The plaintiff seeks leave to amend her Complaint. The Motion is DENIED WITHOUT PREJUDICE.

The plaintiff states that she seeks “an order allowing the filing of her Amended Complaint in this matter by adding two additional Defendant’s [sic] which include ‘TD AMERITRADE ONLINE HOLDINGS CORP.’ and ‘TD AMERITRADE HOLDING CORPORATION,’ . . . to her original *Pro Se* Complaint . . .” *Motion*, p. 1.¹ The plaintiff does not attach to the Motion a proposed amended complaint. Instead, she “urges the Court to grant her Motion to file the Amended Complaint accompanying this Motion and supporting documentation by striking the original Complaint page and page 2 and having the Court approve

¹I cite to the page numbers of the Motion and its attachments as they are assigned by the court’s docketing system.

replacing them with revised Complaint page and page 2 of Title VII Amended Complaint filed March 24, 2010.” Id. at p. 3. Attached to the Motion, however, are five pages. Several of these pages list defendants other than Ameritrade Online Holdings Corp. and Td Ameritrade Holding Corporation.

Rule 15, Fed.R.Civ.P., provides that a complaint may be amended once as a matter of course within 21 days after serving it, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of 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 pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.” Id. at 15(a)(2).

Here, the plaintiff has not yet served her Complaint on the defendants. Therefore, she may amend her Complaint as a matter of course. However, the plaintiff may not amend her Complaint by simply filing piecemeal amendments and supplements. Rather, she must file the entire proposed second amended complaint. The plaintiff may not incorporate by reference her original Complaint. The amended complaint must stand alone; it must contain all of the plaintiff's claims. Mink v. Suthers, 482 F.3d 1244, 1254 (10th Cir. 2007) (stating that “an amended complaint supercedes an original complaint and renders the original complaint without legal effect”).

In addition, the plaintiff is reminded that the Complaint must be served on the defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. Rule 4 provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The 120 days for service provided in Rule 4(m) expires on May 28, 2010.

Finally, the plaintiff was previously advised by the court that Rule 7(b), Fed.R.Civ.P., requires that “[a] request for a court order must be by motion” and that “[t]he rules governing captions and other matters of form in pleadings apply to motions and other papers.” *Order issued February 2, 2010* [Doc. #5]. The plaintiff has submitted her request to amend the Complaint in the form of a “memorandum,” not in the form of a motion.

IT IS ORDERED that the Motion is DENIED WITHOUT PREJUDICE, subject to compliance with this Order.

IT IS FURTHER ORDERED that on or before May 28, 2010, the plaintiff shall file with the court proof of service on all of the defendants.

IT IS FURTHER ORDERED that future requests to the court shall be submitted in the form of a motion.

IT IS FURTHER ORDERED that failure to comply with this order may result in my recommendation that the Complaint be dismissed.

Dated April 1, 2010.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge