

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

ASHLEY GREEN,)	
)	
Plaintiff,)	Civil Action No. 5:10-cv-367-JMH
)	
v.)	
)	
MARK SANDY, et al.,)	
)	MEMORANDUM OPINION & ORDER
Defendants.)	

** ** ** ** **

Upon a review of the record in this matter, the Court notes that on January 31, 2011, Plaintiff filed a First Amended Complaint [DE 35] without consent from Defendants or leave of Court.

Plaintiff filed her original Complaint in this matter on October 22, 2010 [DE 1]. All parties were served no later than November 3, 2010. [DE 14-29.] By agreement of the parties and Order of this Court [DE 7, 10], Defendants filed a Motion to Dismiss and Supplemental Motion to Dismiss [DE 11, 12] on December 20, 2010. With leave of Court [DE 33], Plaintiff filed her Response in opposition to the Motion [DE 36] on January 31, 2011, at the same time as her First Amended Complaint [DE 35], which she filed without leave of Court.

Fed. R. Civ. P. 15(a)(1) provides that "[a] party may amend its pleading 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." In any other situation, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2).

In the instant matter, well over 21 days expired between the time that Plaintiff served her original Complaint, the pleading which she now seeks to amend, and filed the document styled as a First Amended Complaint. Since her original Complaint is one to which a responsive pleading is required, her time to amend it, as a matter of course, ran 21 days after service of Defendants' Motion to Dismiss and Supplemental Motion to Dismiss under Rule 12(b) on December 20, 2010, or January 10, 2011. Thus, by waiting to file until January 31, 2011, her First Amended Complaint was filed in the record outside of the provisions set forth in Fed. R. Civ. P. 15(a)(1). Rather, under Fed. R. Civ. P. 15(a)(2), Plaintiff needs Defendants' written consent or this Court's leave to file her First Amended Complaint.

Accordingly, **IT IS ORDERED:**

(1) that the Clerk shall designate Plaintiff's First Amended Complaint [DE 35] filed on January 31, 2011, as a document "tendered" to this Court but not yet filed in the record;

(2) that Plaintiff shall have **FIVE (5) DAYS** from entry of this order to obtain and submit written consent from Defendants to file a First Amended Complaint in the record of this matter or request leave of Court to file her First Amended Complaint by

motion. If Defendants object to Plaintiff's motion to file a First Amended Complaint, they shall have **TEN (10) DAYS** from the filing of Plaintiff's motion to make their response and state their objections. Upon filing of same, Plaintiff shall have **FIVE (5) DAYS** to file any reply in further support of her motion for relief.

This the 1st day of February, 2011.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge