

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MATTHEW WHITTEN,

Plaintiff,

vs.

CITY OF OMAHA, a political subdivision;
JON MARTIN, #1520, individually and as
an Officer of the Omaha Police
Department; SEAN SHERIDAN, AND
Sergeant, #1671, individually and as an
Officer of the Omaha Police Department;
and MATTHEW BACKORA, Officer,
#1821, individually and as an Officer of the
Omaha Police Department;

Defendants.

8:15CV96

ORDER

Before the court is Plaintiff's Motion to File his Third Amended Complaint. ([Filing No. 42](#)). For the following reasons, Plaintiff's motion will be denied and his Third Amended Complaint, ([Filing No. 43](#)), will be stricken from the record.

BACKGROUND

Plaintiff filed his original complaint on March, 12 2015. ([Filing No. 1](#)). The complaint was amended on October 29, 2015, to name defendants and to clarify and add claims. ([Filing No. 12](#)). On November 16, 2015, the undersigned magistrate judge filed a findings, recommendation and order for the dismissal of claims against all remaining unnamed defendants. ([Filing No. 13](#)). Plaintiff again moved to amend his complaint on December 4, 2015. ([Filing No. 16](#)). However, his proposed second amended complaint included unnamed defendants and was denied. ([Filing Nos. 16 & 18](#)). On December 10, 2015, the assigned district judge adopted the findings and recommendation and accordingly dismissed all John Doe defendants with prejudice. ([Filing No. 22](#)).

Plaintiff again moved for leave to file a second amended complaint on December 12, 2015. That motion was granted. ([Filing Nos. 26 & 27](#)). Plaintiff's second amended complaint was materially similar to the first amended complaint: The second amended complaint corrected spelling and grammatical errors and removed state law claims. ([See Filing No. 28](#)).

Plaintiff served his complaint on each Defendant by December 21, 2015. ([See Filing Nos. 30–34](#)). Defendants moved to dismiss Plaintiff's claims on February 3, 2016. ([Filing No. 39](#)). Plaintiff filed this motion on February 21, 2016. Plaintiff explains his proposed third amended complaint would add a party, Officer Mike Seymour in his individual and official capacities, and clarify Count I of his complaint. ([Filing No. 41 at CM/ECF p. 1](#)). On February 29, 2016, without a ruling on the current motion or being granted leave of court, Plaintiff filed his third amended complaint. ([Filing No. 43](#)).

ANALYSIS

The time for amending Plaintiff's pleading as a matter of course has expired, and he has previously been granted leave to amend his complaint. So his pleading may now be amended only if the opposing party provides written consent or with leave of the court. [Fed. R. Civ. P. 15](#). In general, courts are encouraged to liberally grant leave to amend. [See Shen v. Leo A. Daly Co., 222 F.3d 472, 478 \(8th Cir. 2000\)](#). However, there is no absolute right to amend a pleading. [Hammer v. City of Osage Beach, MO, 318 F.3d 832, 844 \(8th Cir. 2003\)](#). Leave to amend may be denied for good reason including “undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of amendment[.]” [Kozohorsky v. Harmon, 332 F.3d 1141, 1144 \(8th Cir. 2003\)](#).

Plaintiff's proposed third amended complaint is materially similar to his previous complaints. The proposed amended complaint adjusts the facts slightly to explain which

facts form the basis of Count I of his complaint. He has been provided leave to amend his complaint on several occasions and has failed to cure deficiencies: each time, the plaintiff has changed only minor typographical errors or omissions and has repeatedly delayed the process of this case, which has now been pending for over a year. Additionally, he had over a year to identify the officers involved in the case, and provides no reason why Officer Seymour could not have been named previously. Accordingly, the court denies Plaintiff's Motion to Amend.

IT IS THEREBY ORDERED:

- 1) Plaintiff's motion to file an amended complaint, ([Filing No. 42](#)), is denied.
- 2) Plaintiff's third amended complaint, ([Filing No. 43](#)), is stricken from the record.
- 3) Defendant's motion to dismiss the Filing No. 43 complaint, (Filing No. [44](#)), is denied as moot.
- 4) Plaintiff's response to Defendant's motion to dismiss, (Filing No. [39](#)), shall be filed on or before April 6, 2016, with any reply filed on or before April 13, 2016.

Dated this 25th day of March, 2016.

BY THE COURT:

s/ Cheryl R. Zwart

United States Magistrate Judge