

- COMPLAINT

DAVE BARRY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

GARY KNOP, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 PERRY M. JOHNSON, et al.,)
)
 Defendants.)

C.A. No. G84-651 CA5

Knop v. Johnson



PC-MI-006-001

MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiffs, by their undersigned attorneys, move this court for an order pursuant to Rule 15(a), Federal Rules of Civil Procedure for leave to file an amended complaint. The grounds for this motion are set forth in the accompanying memorandum.

A copy of the proposed amended complaint is filed with this motion.

WHEREFORE, plaintiffs respectfully request that this court grant plaintiffs' motion for leave to file an amended complaint.

Respectfully submitted,

Elizabeth Alexander ^{by mm}
Elizabeth Alexander
Mary E. McClymont
National Prison Project of the
American Civil Liberties
Union Foundation
1346 Connecticut Avenue, NW
Suite 402
Washington, D.C. 20036
202/331-0500

William Fette ^{by mm}
William Fette
American Civil Liberties
Fund of Michigan
222 S. Westnedge Ave.
Kalamazoo, Mich. 49007
616/382-1030

Counsel for Plaintiffs

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MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT

I. FACTS

The plaintiffs' original complaint was filed in June 1984. In addition to this motion to amend the complaint the plaintiffs have also filed a motion to add parties. If this motion is granted, the proposed amended complaint would reflect these parties, the allegations pertaining to them, and an amplification of some of the original allegations.

II. ARGUMENT

(1) The filing of an amended complaint will allow the addition of the parties to be reflected clearly in the record.

(2) In the course of discovery by touring the prison facilities the plaintiffs have discovered some minor factual errors in the original complaint and have discovered some additional factual matters, intimately connected to the conditions of confinement originally alleged.

(3) There is no unfair surprise or other prejudice to the defendants in presenting these amplified allegations.

(4) This litigation was originally instituted as a totality of conditions challenge to conditions at the three major prisons and the amplified factual allegations are closely related to the original allegations and should aid the Court and the defendants by setting forth in greater detail the claims against the defendants.

(5) The proposed amended complaint does not change the nature of the relief requested. It is filed in good faith as soon as reasonably possible after the facts became available to plaintiffs as a result of discovery. The filing of the amended complaint will not delay in any manner the prosecution of this suit.

(6) Rule 15(a), Federal Rules of Civil Procedure, states that "...leave [to amend the pleadings of a party] shall be freely given when justice so requires." Under the liberal standard set forth in the leading case by the Supreme Court interpreting Rule 15, it is apparent that leave to amend should be granted:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules

require, be "freely given."

Foman v. Davis, 371 U.S. 178, 182-183 (1962).

For the above reasons, plaintiffs request that the motion for leave to amend complaint be granted.

Respectfully submitted,

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Mary E. McClymont
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