

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JERRY CHARLES,

Plaintiff,

v.

MATTHEW J. FRANK, JON
LITSCHER & DICK VERHAGEN,

Defendants.

ORDER

02-C-626-C

Plaintiff Jerry Charles has submitted a document titled “Motion for Supplemental Pleadings Pursuant to Fed. R. Civ. P. 15(d),” in which he seeks to add factual allegations to his complaint. However, plaintiff’s submission is not a supplemental pleading within the meaning of Rule 15(d). That rule “governs the supplementation of a pleading as a result of events subsequent to the filing of the original pleading.” Glatt v. Chicago Park District, 87 F.3d 190, 194 (7th Cir. 1996). Most of the new facts described in plaintiff’s submission did not come to light only after he filed his complaint in this case. Accordingly, I construe plaintiff’s submission as a motion to amend his complaint pursuant to Fed. R. Civ. P. 15(a). Rule 15(a) states that “a party may amend [its] pleading once as a matter of course at any

time before a responsive pleading is served” and that otherwise amendments are permissible “only by leave of court.” Plaintiff requires leave of the court to amend his complaint because he has previously filed a motion to amend his complaint in this case. Whether to grant leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court. Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). Among other things the court should consider the amendment’s probable merit; whether the proposed changes could have been added earlier; and any prejudice to the parties resulting from a decision to grant or deny the amendment. Glatt, 87 F.3d at 194. In this case, plaintiff proposes to add factual detail to his complaint in order to bolster certain claims upon which he was denied leave to proceed when the court screened his complaint pursuant to the Prison Litigation Reform Act. I have reviewed the factual allegations that plaintiff proposes to add to his complaint and they do not convince me that I erred in denying him leave to proceed on his claims regarding the size of his prayer rug, access to Internet and cassette-based distance learning courses and assisting the prison’s outside Islamic representative. Moreover, there is no indication that plaintiff was unaware of the “new” facts he alleges in his proposed amendment at the time he filed his original complaint. Finally, defendants have now answered plaintiff’s complaint. Requiring them to file a new answer on the basis of a complaint amended to add facts of which plaintiff was aware when he filed his original complaint would serve only to protract this litigation. Accordingly, plaintiff’s motion to

amend his complaint is DENIED.

Entered this 7th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge