

IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION-DAYTON

FILED
JUN 01 2001
KENNETH J. MURPHY, Clerk
DAYTON, OHIO

MICHAEL A. GALLUZZO
PLAINTIFF,

VS.

CASE NO. C-3-01-174
Chief Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

CHAMPAIGN COUNTY COURT
OF COMMON PLEAS, et al.
Defendant,

MOTION OF PLAINTIFF MICHAEL A. GALLUZZO
FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT ATTACHED *INSTANTER*

“CLAIM of UNCONSTITUTIONALITY”

Plaintiff Michael A. Galluzzo moves this Court to amend the pleadings pursuant to Federal Civil Rule 15 attached *instanter* as **EXHIBIT 1**.

Plaintiff has requested dismissal of several Defendants [Cook, Judge Wilson, & Tompkins] pursuant to the damage and injunctive claims alleged under 42 U.S.C. 1983.

Further, Plaintiff requested dismissal of the same Defendants, with the exception of the Champaign County Court of Common Pleas, pursuant to the declaratory relief claims specified under 28 U.S.C. 1331.

Plaintiff respectfully requests leave to amend the pleadings to clarify the federal questions and issues raised and the facial constitutional challenges to Ohio law against Defendant Champaign County Court of Common Pleas.

Civil Rule 15 states that leave shall be freely given when justice so requires and this Court has concluded that:

“[U]nless the court finds some type of improper behavior on the part of Plaintiff or finds that allowing Plaintiff to amend his complaint would be futile, the court must

grant Plaintiff's leave to amend his complaint." *Caron v. Manfreda*, Case No. C2-98-1151, Hon. Judge Kinneary, Doc. #60, p. 14, referencing *Foman v. Davis*, 371 U.S. 178 at 182 (1962).

In the instant case, discovery has not even begun, therefore Defendant Champaign County Court of Common Pleas will not be prejudiced by allowance of this amended complaint.

Further, the Court should note that this is Plaintiff's first amended complaint and the Court should take judicial notice that Plaintiff had an inability to amend due to his incarceration (April 27 – May 27, 2001). Clearly, Plaintiff has not (and could not have) abused this process, which is further supported by the fact that the original complaint was filed April 27, 2001.

WHEREFORE, Plaintiff Michael A. Galluzzo respectfully requests leave of Court to file the amended complaint attached *instanter*.

Respectfully submitted,



Michael A. Galluzzo, Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND ACCURATE COPY OF THE FOREGOING MOTION WAS SERVED UPON **DEFENDANT CHAMPAIGN COUNTY COURT OF COMMON PLEAS** and the **ATTORNEY GENERAL for THE STATE of OHIO**, BY U.S. MAIL, POSTAGE PREPAID, THE 31ST DAY OF MAY 2001.



Michael A. Galluzzo, Plaintiff