

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

Civil Division

JERRY M., et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 1519-85 (IFP)
)
 DISTRICT OF COLUMBIA, et al.,)
)
 Defendants.)

MOTION TO AMEND THE COMPLAINT AND
INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs, through counsel, respectfully move this Honorable Court, pursuant to Superior Court Civil Rule 15, to allow them to file an amended complaint, adding language in the complaint to address the need for the least restrictive setting to be used when incarcerating members of the plaintiff class, the need for greater availability of alternatives to incarceration in the three institutions at issue, and the need for more frequent, accurate, and detailed evaluations of the needs of members of the plaintiff class. The necessity of amending the complaint arose after several of plaintiffs' experts, upon touring the three facilities (pursuant to Superior Court Rule 34 of Civil Procedure), discovered excessive and unwarranted incarceration of children who should not be institutionalized in any of the three facilities at issue and learned of inadequate assessment and treatment by defendants of the needs of the children entrusted to defendants' care and custody.

Significantly, defense counsel was present on all of the experts' tours during which said experts expressed their concern over these issues. Thus, defendants have had notice of these areas of concern for over a month. Moreover, it is significant that these amendments do not represent a substantive change in the nature of this action and that defendants, as of the filing of this motion, have yet to answer the amended complaint filed on January 15, 1986.

The rule permitting amendment of a pleading is to be liberally applied. Eagle Wine and Liquor Co., et al. v. Silverberg Electric Company, 402 A.2d 31, 34 (D.C. Ct. App. 1979) (there should be a "prevailing spirit of liberalism in allowing ... amendments when justice will be so served"). See also, Hartford Accident and Indemnity Company v. District of Columbia, et al., 441 A.2d 969 (D.C. Ct. App. 1982). Leave to amend a pleading, even after a responsive pleading has been filed, is generally "freely given" since "this jurisdiction favors resolution of controversies on their merits." Gordon v. Raven Systems and Research, Inc., 462 A.2d 10, 13 (D.C. Ct. App. 1979) (when suit against the District of Columbia has afforded Mayor timely notice of suit and circumstances manifesting an intention to sue the city, the Court should permit amendment of the pleadings consistent with that notice). See also, Epps v. Vogel, 454 A.2d 320 (D.C. Ct. App. 1982); Keith v. Washington, 401 A.2d 468 (D.C. Ct. App. 1969).

In the instant case defendants were aware of plaintiffs' intentions over one month ago based on expert tours which have been taking place since the end of January, 1986, the most recent of which did not take place until the end of March, 1986. Moreover, the need to add language referring to utilization of the least restrictive alternative, greater availability of alternatives to incarceration, and more frequent, accurate, and detailed assessments of the needs of the population in each of the three institutions at issue, only arose after plaintiffs' experts toured the three facilities and it became apparent that these aspects of the conditions at each of the three facilities needed to be addressed.

Absent bad faith, undue delay, dilatory tactics, or undue prejudice to the opposing party, leave to amend a pleading is to be granted where "justice so requires." Blake Construction Co., Inc. v. Alliance Plumbing and Heating, 388 A.2d 1217, 1220 (D.C.

Ct. App. 1978) cert. denied, 440 U.S. 911 (1979). See also, Gordon v. Raven Systems and Research, Inc., supra, 462 A.2d at 13 (D.C. Ct. App. 1983) (factors to be considered in determining whether to grant leave to amend a pleading include "the length of the pendency of the proceedings, [and] the existence of bad faith or dilatory motive, [and] prejudice to the opposing party"); Bennett v. Fun and Fitness of Silver Hill, 434 A.2d 476 (D.C. Ct. App. 1981).

In the instant case any arguable delay in amending the complaint has not been due to dilatory tactics on plaintiffs' part, 1/ nor has it been caused by plaintiffs' bad faith. Moreover, the delay has not been lengthy given the chronology of the case and the fact that defendants have not even answered the amended complaint filed on January 15, 1986. Finally, no prejudice is caused defendants by amending the complaint at this time since the amendments do not entail substantive charges, but merely re-phrase the terms in which the complaint is set forth. 2/

As stated by the Supreme Court,

"Leave to amend 'shall be freely given when justice so requires'; 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

1/ As explained, supra, it was only through the expert tours between the end of January and the end of March, 1986, that the three concerns plaintiffs seek to address by their amended complaint came to the fore.

2/ The amended complaint differs from the amended complaint filed on January 15, 1986 in the following limited ways: a) the last sentence of paragraph 1 on page seven (7) is new; b) paragraphs 172 through 175 are new; c) Count VIII on page 55 is new; d) paragraph 1, on page 58 is new.

party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the . . . Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the . . . Rules."

Foman v. Davis, 371 U.S. 178, 182 (1962), quoting Federal Rule of Civil Procedure 15(a). 3/

WHEREFORE, for all the aforementioned reasons, any others which may appear at a full hearing on this matter, and any others which this Court deems just and proper, Plaintiffs respectfully request that this Honorable Court grant this Motion and allow Plaintiffs to amend the Complaint.

3/ Federal Rule of Civil Procedure 15(a) is identical to SCR-Civil 15(a), except that the latter contains an additional sentence specifying a time limit, after the filing of a responsive pleading, within which an amended pleading must be filed. See, SCR-Civil 15, Comment. As discussed supra at page 2, in this case, defendants have yet to file an answer to the amended complaint plaintiffs filed on January 15, 1986.

Respectfully submitted,

CHERYL LONG
Director
D.C. Bar No. 213 892

RANDOLPH N. STONE
Deputy Director
D.C. Bar No. 913 913

SANTHA SONENBERG
Staff Attorney
D.C. Bar No. 376 188

PUBLIC DEFENDER SERVICE
451 Indiana Avenue, N.W.
Washington, D.C. 20001
628-1200

MARY McCLYMONT
D.C. Bar No. 244 020

STEVEN NEY, D.C.
D.C. Bar No. 266 163

AMERICAN CIVIL LIBERTIES UNION
NATIONAL PRISON PROJECT
1616 P Street, N.W.
Washington, D.C. 20036
331-0500

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of both the foregoing Motion to Amend the Complaint and Incorporated Memorandum of Points and Authorities in support thereof and the amended complaint, was served, by hand, on Roberta Gross, Nancy Dorsch, and Colin Carriere, Assistant Corporation Counsel for the District of Columbia, Office of the Corporation Counsel, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, this ____ day of April, 1986.

CHERYL LONG

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

Civil Division

JERRY M., et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 1519-85 (IFP)
)
DISTRICT OF COLUMBIA, et al.,)
)
 Defendants.)

O R D E R

Upon consideration of the motion of plaintiffs to amend the Complaint, and the memorandum of points and authorities in support thereof, and good cause having been shown, it is by the Court, this _____ day of _____, 1986,

ORDERED that the plaintiffs' motion to amend the complaint shall be, and hereby is, granted, so that plaintiffs may add language to the complaint addressing the need for the least restrictive setting to be used when incarcerating members of the plaintiff class, the need for greater availability of alternatives to incarceration in the three institutions at issue, and the need for more frequent, accurate, and detailed evaluations of the needs of members of the plaintiff class.

JUDGE

Copies to:

Roberta Gross
Nancy Dorsch
Colin Carriere
Corporation Counsel,
D.C. District Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Cheryl Long
Randolph N. Stone
Santha Sonenberg
Public Defender Service
451 Indiana Avenue, N.W.
Washington, D.C. 20001

Steven Ney
Mary McClymont
ACLU National Prison Project
1616 P Street, N.W.
Washington, D.C. 20036