

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FRANK J. NIELANDER,

Plaintiff,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF THE
COUNTY OF REPUBLIC,
KANSAS, et al.,

Defendants.

Case No. 06-2013-CM

ORDER

This matter comes before the court upon plaintiff's Motion for Leave to File Amended Complaint (Doc. 27). The court has contacted defendants' counsel who does not oppose the present motion. Plaintiff seeks to amend his complaint to include an additional state law claims. Before filing these additional claims, plaintiff must meet the requirements of K.S.A. 12-105b(d) which provides in part:

Any person having a claim against a municipality which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided in this subsection before commencing such action In the filing of a notice of claim, substantial compliance with the provisions and requirement of this subsection shall constitute valid filing of a claim. . . .

Plaintiff contends he has now complied with these requirements.

Fed. R. Civ. P. 15 controls the procedure for amending the pleadings. Rule 15(a) states, in pertinent part, that after a responsive pleading: "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice

so requires.”¹ In considering whether to grant leave to amend, the court evaluates several factors including whether the amendment will cause undue delay or prejudice to the non-moving party.²

The recent scheduling order (Doc. 23) gives the parties until March 19, 2007 to complete all discovery which should provide the parties with ample opportunity to discovery these additional claims. Further, as defendants do not object to the present motion, the amendment should not cause them prejudice. Accordingly, and in the interest of justice,

IT IS THEREFORE ORDERED that plaintiff’s Motion for Leave to Amend Complaint (Doc. 27) is granted. The court directs the Clerk to file Attachment 1 to Doc. 27 as plaintiff’s First Amended Complaint.

IT IS SO ORDERED.

Dated this 14th day of December, 2006, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge

¹Fed. R. Civ. P. 15(a).

² *Little v. Reed-Prentice Div. Of Package Mach. Co.*, 131 F.R.D. 591, 593 (D. Kan. 1990) (citations omitted).