

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BLAINE DRYDEN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 11-1354-KGS
)	
CITY OF HAYS, KANSAS, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court upon Plaintiff’s Motion to Amend Complaint (ECF No. 28). In the current motion, Plaintiff seeks leave to amend his complaint to include allegations that Defendant City of Hays exhibited deliberate indifference when it failed to train its employees to recognize Plaintiff’s speech as protected activity.

Fed. R. Civ. P. 15 governs the procedure for amending the pleadings. A party may amend a pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e) or (f).¹ In all other cases, a party may amend its pleading only with the Court’s leave or with the opposing party’s written consent.²

The decision to grant leave to amend after the permissive period lies within the discretion of the trial court.³ Refusing leave to amend is generally justified only upon a showing of undue

¹ Fed. R. Civ. P. 15(a).

² *Id.*

³ *Stewart v. Brd. of Comm’rs for Shawnee County, Kan.*, 216 F.R.D. 662, 664 (D. Kan. 2003) (citing *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1452, 1462 (10th Cir. 1993)).

delay, undue prejudice to the opposing party, bad faith, or futility of the amendment.⁴

Because no party has opposed the motion, there is no showing before the Court of undue delay, undue prejudice, bad faith, or futility of the amendment. Additionally, the failure to file a response brief typically means that “the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.”⁵ Therefore, the Court finds that the Plaintiff’s motion should be granted.

Accordingly, and without objection,

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Amend Complaint (ECF No. 28) is hereby granted. Plaintiff shall file and serve his proposed Amended Complaint (ECF No. 28-1) as a separate document in this case pursuant to D. Kan. R. 15.1(b).

IT IS SO ORDERED.

Dated this 13th day of June, 2012 at Topeka, Kansas.

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

⁴ *Id.*

⁵ D. Kan. R. 7.4.