

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JEAN FRANCOIS POULIOT,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 01-179-B-K
	)	
TOWN OF FAIRFIELD, et al.,	)	
	)	
Defendants	)	

ORDER ON SECOND MOTION TO AMEND<sup>1</sup>

Before this court is a second motion to amend a complaint (Docket No. 14) in an action brought by Jean Francois Pouliot, a former police chief for the Town of Fairfield, against the Town of Fairfield and various individual defendants. This dispute arose from events surrounding Pouliot’s health troubles, Fairfield Police Department fiscal irregularities, and Pouliot’s eventual resignation from his position as chief of police.

Pouliot first amended his complaint on October 15, 2001, at this juncture adding claims against the defendants in their individual capacities. (Docket No. 4.) That complaint bore seven counts: two procedural due process counts, one right to privacy count; two American with Disabilities Act (ADA) counts; and two Maine Human Rights Act (MHRA) counts. On February 19, 2002, Judge Singal entered a decision on a motion to dismiss the amended complaint. (Docket No. 11.)<sup>2</sup> Therein he dismissed with prejudice Count I, a due process claim alleged against individual defendants after

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

<sup>2</sup> Judge Singal treated the amended complaint as having superseded the first complaint and concluded that the defendants’ motion to dismiss the first complaint was therefore moot. The defendants’ request to have their arguments contained in the original motion to dismiss applied to the amended complaint was granted.

determining they were entitled to qualified immunity. He dismissed without prejudice Count V, an ADA failure to accommodate claim, and Count VII, a parallel MHRA failure to accommodate claim. This left standing Count II, a due process claim against the town; Count III, a violation of a right to privacy claim; and Counts IV and VI, ADA and MHRA claims premised on the publication of confidential medical information.

The present motion to amend was filed on April 10, 2002, forty-nine days after the order on the motion to dismiss entered. In this motion the plaintiff proffers the amendment to “respond to (1) Judge Singal’s February 19, 2002, Order, and (2) information recently acquired through discovery.” The discovery deadline was April 15, 2002; the matter is set for a trial to commence on September 23, 2002.

The first amendments Pouliot seeks are directed at Judge Singal’s conclusion that Pouliot’s ADA and MHRA counts based on failure to accommodate should be dismissed without prejudice because he failed to allege a disability and may not have adequately alleged that he was a qualified individual under the ADA. Pouliot wants to amend the complaint to add allegations that Pouliot was substantially limited in various major life activities, such as thinking, concentrating, interacting with others, sleeping, and eating. He also wants to add allegations that at all times he was qualified to perform the essential functions of his position with a reasonable accommodation, to wit, a leave of absence. Pouliot argues that the defendants have had notice sufficient to comprehend these amendments and that they will not be prejudiced by the amendments.

Pursuant to Federal Rule of Civil Procedure 15(a), leave to amend a complaint should be freely given:

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 party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be 'freely given.'

Foman v. Davis, 371 U.S. 178, 182 (1962).

The defendants contend that they would be prejudiced by allowing this amendment because it comes near the end of discovery and requires them to defend against a claim that the “reasonable accommodation” that Pouliot was seeking was a leave of absence, rather than just a postponement of his disciplinary hearing as alleged in the initial complaint. They view this as a “new” reasonable accommodation claim that will require them to re-take depositions as none of the witnesses have even testified that Pouliot requested a leave of absence.

I agree with the defendants that Pouliot should have swiftly moved for this second amendment after the issuance of Judge Singal’s February 19, 2002, order alerting Pouliot to this concern. And it is true that the First Circuit has more than once recognized that it is not an abuse of discretion to deny the motion to amend on the grounds that there was an “undue delay” in filing the motion to amend. Larocca v. Borden, Inc., 276 F.3d 22, 32 (1st Cir. 2002). However, in most of the cases examined by this court the delay was more prolonged and the resulting prejudice more extenuated. For example, the Larocca plaintiffs, having already twice been given leave to amend the complaint, filed the motion to amend after the completion of discovery and after issuance of “an all-but-dispositive ruling on cross-motions for summary judgment.” Id.; see also Walton v. Nalco Chem. Co., 272 F.3d 13, 19-20 (1st Cir. 2001) (concluding there was no abuse of discretion in denial of a motion to amend, noting that the motion was filed eight months after the

scheduling order due date, six months after the close of discovery, and just one week prior to trial).

Guided by Foman and cases like Larocca, this is a borderline case that involves a weighing of the length of delay in filing the motion to amend and the prejudice to the defendants in meeting the amendment. I identify no improper motive in the delay, nor do I conclude that the amendment would be futile. I also must view this pleading dispute in light of the United States Supreme Court's freshly inked Swierkiewicz v. Sorema N. A., 534 U.S. 506, 122 S. Ct. 992, 999 (2002) (concluding with respect to Title VII and ADEA claims that Federal Rule of Civil Procedure 8(a) liberal notice standard applied and that the defendant had fair notice of the claims) that issued after Judge Singal's February 19, 2002, order on the motion to dismiss. For the defendants were certainly "on notice" that the legal construct of "reasonable accommodation" was an issue in this case from day one, though Pouliot had not made the factual allegation that he was seeking a leave of absence by way of accommodation. Defendants complain that they were following a theory that the reasonable accommodation was a postponement of the disciplinary hearing and contend that the fact that Pouliot was seeking a leave of absence has not yet surfaced with discovery at its end. However, while recognizing that there is some prejudice to the defendants in allowing this amendment, I conclude that whether Pouliot can prove-up this fact is a question better left for another stage in this action, according to the recent counsel of Swierkiewicz. 122 S. Ct. at 998 ("This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims."). If defendants must undertake some abbreviated additional discovery, I will address that

separately. However, I do note that in terms of the anticipated summary judgment motion, most of the relevant witnesses are agents of the defendant Town and their affidavits could supplement the record for summary judgment purposes just as well as deposition testimony.

Pouliot's second requested amendment relates to Count II, the procedural due process claim against the Town of Fairfield. Pouliot wants to amend the allegations of this count to allege that, pursuant to the town's charter, the Town Manager sets the Town's policy on hiring, termination, and discipline of Department heads, including the Police Chief. He further seeks to amend this count to allege that Terry York, the Town Manager, refused Pouliot's attorney's request to continue the disciplinary hearing. This information, Pouliot states, came to his attention during discovery and the amendment is an effort to conform the pleadings to the evidence. Pouliot is not attempting to add a new claim or seek relief from a new party. The defendants do not contest the amendment as such. Therefore, I concluded that this is a permissible amendment.

For these reasons I now **GRANT** Pouliot's second motion to amend.

***So Ordered.***

Dated: May 14, 2002.

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Margaret J. Kravchuk  
U.S. Magistrate Judge

STNDRD

TRIAL

U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 01-CV-179  
POULIOT v. FAIRFIELD, TOWN OF, et al  
08/31/01  
Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None  
ury demand: Both  
Nature of Suit: 442  
Jurisdiction: Federal Question  
Filed:

Cause: 28:1331 Fed. Question: Civil Rights Violation

JEAN FRANCOIS POULIOT  
plaintiff

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[COR LD NTC]  
WARREN SILVER, P.A.  
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947-0178

v.

FAIRFIELD, TOWN OF  
defendant

MARK V FRANCO  
[COR LD NTC]  
LISA FITZGIBBON BENDETSON, ESQ.  
THOMPSON & BOWIE  
3 CANAL PLAZA, P.O. BOX 4630  
PORTLAND, ME 04112  
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DAWNALYSCE CLIFFORD  
defendant

MARK V FRANCO  
(See above)  
[COR LD NTC]  
LISA FITZGIBBON BENDETSON, ESQ.  
(See above)

RICHARD SPEAR  
defendant

MARK V FRANCO  
(See above)  
[COR LD NTC]  
LISA FITZGIBBON BENDETSON, ESQ.  
(See above)

BILL BOIS  
defendant

MARK V FRANCO  
(See above)  
[COR LD NTC]  
LISA FITZGIBBON BENDETSON, ESQ.  
(See above)  
[COR]

FRANKLIN BOUCHARD  
defendant

MARK V FRANCO  
(See above)  
[COR LD NTC]  
LISA FITZGIBBON BENDETSON, ESQ.  
(See above)  
[COR]

SHERI LAVERDIERE  
defendant

MARK V FRANCO  
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