

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**BENJAMIN MARCUM,**

**Plaintiff,**

**v.**

**Civil Action No. 2:21-cv-107**

**CHARLES MOLES,**

**Defendant.**

**PLAINTIFF’S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff hereby moves to amend his complaint. In support of the motion, Plaintiff states as follows:

1. This action was filed pro se by Plaintiff on or around February 12, 2021. Dkt. 2.
2. In his complaint, Plaintiff named Corporal Charles Moles as the sole Defendant.
3. In mid-September 2021, Plaintiff met with undersigned counsel seeking representation regarding this case.
4. Undersigned counsel agreed to represent Plaintiff in this action, and now seek leave to file an Amended Complaint on his behalf.
5. The Amended Complaint, attached to this motion as Exhibit A, would add a new Defendant—Superintendent Donnie Ames—in his supervisory capacity. The Amended Complaint would also add an additional claim against Defendants for assault and battery under state law.
6. Pursuant to Rule 15, an amendment may be effectuated through leave of the Court. “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).
7. The Court of Appeals for the Fourth Circuit has stated that “leave to amend should be denied only when the amendment would be prejudicial to the opposing party, there has been

bad faith on the part of the moving party, or amendment would be futile.” *Matrix Capital Mgmt. Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 193 (4th Cir. 2009).

8. Here, permitting Plaintiff to amend will not prejudice any party, as this matter is still in early stages and discovery has yet to commence. *See* Order and Notice. Dkt. 18.

9. There has been no bad faith on the part of the Plaintiff.

10. Finally, not only would the amendment not be futile, permitting counsel to clarify the pro se allegations and claims in this matter will aid both the Court and opposing parties in understanding the exact nature of the action.

11. Accordingly, as set forth herein, this motion is in the interest of justice and is not prejudicial, and thus should be granted.

WHEREFORE, Plaintiff respectfully requests that the Court grant leave to amend the Complaint, and direct the Clerk of the Court to file the attached First Amended Complaint.

Respectfully submitted,

**Plaintiff,**  
**BENJAMIN MARCUM,**  
**By Counsel,**

/s/ Loree Stark  
Loree Stark (WV Bar # 12936)  
ACLU of West Virginia Foundation  
P.O. Box 3952  
Charleston, WV 25339-3952  
(914) 393-4614

/s/ Lydia C. Milnes  
Lydia C. Milnes (WV Bar # 10598)  
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**CERTIFICATE OF SERVICE**

I, Loree Stark, do hereby certify that on this 21st day of September, 2021, I electronically filed a true and exact copy of *Plaintiff's Motion for Leave to File Amended Complaint* with the Clerk of Court and all parties represented by counsel using the CM/ECF System.

/s/ Loree Stark \_\_\_\_\_  
West Virginia Bar No. 12936