

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

AARON MICHAEL HUSEK, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil No. 9-231-B-W  
 )  
 BANGOR, CITY OF, )  
 )  
 Defendant. )

**RECOMMENDED DECISION**

Defendant City of Bangor has moved to dismiss this action because of the plaintiff's failure to make service in a timely fashion. In a normal case, I would recommend granting the motion. However, in this circuit the following rule applies in cases such as this one where the plaintiff is proceeding *in forma pauperis*:

Under Rule 4(m) of the Federal Rules of Civil Procedure, when a plaintiff shows "good cause" for failing to effect service within 120 days after the complaint is filed, "the court must extend the time for service for an appropriate period." Each of the appeals courts that have addressed the question have found that a plaintiff proceeding IFP shows good cause when either the district court or the United States Marshals Service fails to fulfill its obligations under section 1915(d) and Rule 4(c)(3). We join our sister circuits in so holding.

Laurence v. Wall, 551 F.3d 92 (1st Cir. 2008) (citations omitted). The docket entries in this case reflect that I never instructed the Clerk to prepare the necessary documents for service following the court's ruling on Husek's early injunctive requests. Thus the plaintiff has shown good cause under the First Circuit precedent cited above. The First Circuit noted that the prior Local Rule for the District of Maine which required the IFP plaintiff to file a motion to request service by the U.S. Marshal was no longer permitted. Id. at 94 n.1. Based upon the foregoing, I recommend the court deny the motion to dismiss.

## NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

December 2, 2009