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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

PATRICK NEAL BRADBERRY,)	
)	
Plaintiff,)	CIV 05-01336 PHX JAT (MEA)
)	
v.)	REPORT AND RECOMMENDATION
)	
DORA B. SCHRIRO, et al.,)	
)	
Defendants.)	
_____)	

This matter was remanded from the Ninth Circuit Court of Appeals on January 23, 2008. On August 26, 2009, the Court granted in part and denied in part Defendants' motion to dismiss, and dismissed several counts and some Defendants from this matter.

The order on the motion to dismiss provided that some of Plaintiff's claims against Defendant Garvin, Defendant Savage, Defendant Tucker, Defendant Lewis, Defendant Glass, and Defendant Atkins have survived, although these Defendants have not been served. The service of Defendants in this matter has been a lengthy, complicated, and involved process. The Magistrate Judge notes that Defendants and the United States Marshal have severely complicated and indeed thwarted the Magistrate Judge's attempts to have all named Defendants in this matter served pursuant to Judge Teilborg's orders.

1 In an order filed August 13, 2008, the Court ordered
2 Plaintiff to return service packets sent to him on July 2, 2008,
3 for all 56 defendants, no later than August 29, 2008. The Court
4 further ordered Defendant Schriro to submit the last known
5 residential address for each defendant, whether a current
6 employee of the ADOC or not, to the Court under seal, on or
7 before September 5, 2008. The Magistrate Judge further ordered
8 the Clerk of the Court to forward the sealed addresses and the
9 completed service packets to the United States Marshal for
10 personal service on each Defendant. The Magistrate Judge
11 included this requirement because a great deal of time
12 litigating this matter has been wasted by the attempts to obtain
13 waiver of service on Defendants. Upon receipt of the service
14 packets, the Court ordered the Marshal to "**attempt PERSONAL**
15 **service on each of the 56 named defendants by physically going**
16 **to each location specified under seal, on or before October 10,**
17 **2008."** The Magistrate Judge further ordered the Marshal "that
18 they may not attempt to complete service by waiver because
19 waivers for all 56 of these defendants have already been
20 rejected," and also ordered that the United States Marshal shall
21 keep time records for the time spend in affecting personal
22 service in this matter so that any defendant who previously
23 refused to waive service at his or her work address can be
24 personally charged for the cost of service. See Fed. R. Civ.
25 Pro. 4(d)(2) (2009).

26 Plaintiff returned service packets to the Court and
27 Defendant Schriro filed, under seal, the residential addresses
28 of forty of the defendants, including Defendants Savage and

1 Lewis. Defendant Schriro averred she was unable to identify and
2 provide an address for Defendant Glass, and that she does not
3 have a residential address for Defendant Atkins or Garvin.
4 Defendant Schriro further represented to the Court that
5 Defendant Tucker and Defendant Pinkstaff are deceased.

6 On September 4, 2008, Defendant Schriro asked the
7 Court to revise its previous order to allow the "United States
8 Marshal to be permitted to attempt service by waiver for the
9 remaining Defendants, and that the remaining Defendants not be
10 personally charged for the cost of service." On September 24,
11 2008, the motion at Docket No. 108 was granted insofar as
12 Defendant Schriro moved the Court to relieve the Marshal of the
13 obligation to effect personal service on, *inter alia*, Defendants
14 Savage and Lewis at their residences. The Court ordered that
15 the Marshal could seek waiver of service from these defendants
16 by mailing requests for waiver of service and the appropriate
17 documents to these defendants at their home addresses.

18 **Defendant Savage**

19 On October 16, 2008, a waiver of service addressed to
20 Defendant Savage at her home address was returned unexecuted as
21 there was no mail receptacle at the address. See Docket No.
22 180. The Marshal then sent a waiver of service to Defendant
23 Savage's post office box, which was returned as undeliverable.
24 See id. There is no indication in the record that the Marshal
25 has attempted personal service on Defendant Savage at the
26 address where there was no mail receptacle, notwithstanding the
27 Court's repeated attempts to have the Marshal personally serve
28 Defendant Savage and the Magistrate's willingness to waive this

1 requirement only upon Defendant's motion and reassurance that
2 diligent efforts were being expended to serve all Defendants and
3 that going to the effort of personal service was not necessary.
4 Accordingly, the Magistrate Judge recommends the Court order the
5 United States Marshal to personally serve Defendant Savage at
6 her home within one month of the date the Court issues its order
7 or face sanctions by the Court.

8 **Defendant Rick Lewis**

9 Similar to the attempts to have Defendant Savage waive
10 service, the last address of Defendant Rick Lewis was disclosed
11 under seal. Service was returned unexecuted as to Defendant
12 Lewis on December 11, 2008, with the notation "no physical
13 address/no signed waiver". See Docket No. 164. There is no
14 indication in the record that the Marshal has attempted personal
15 service on Defendant Lewis at the address disclosed under seal.
16 No further attempts were made to serve this defendant,
17 notwithstanding the Court's repeated attempts to have the
18 Marshal personally serve Defendant Lewis and the Magistrate's
19 willingness to waive this requirement only upon Defendant's
20 motion and reassurance that diligent efforts were being expended
21 to serve all Defendants and that going to the effort of personal
22 service was not necessary. Accordingly, the Magistrate Judge
23 recommends the Court order the United States Marshal to
24 personally serve Defendant Lewis at the address disclosed under
25 seal within one month of the date the Court issues its order or
26 face sanctions by the Court.

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1 **Defendants Glass, Atkins, Garvin and Tucker**

2 The Court allowed Plaintiff until October 24, 2008,
3 to show cause why his claims should not be dismissed as against
4 Defendants Glass, Atkins, Garvin, and Tucker. Plaintiff
5 responded to the order to show cause on or about October 22,
6 2008. Plaintiff states he "is at a loss why defendant Garvin
7 was named by the Court as the ADOC and counsel do not name him
8 as unable to locate." Plaintiff further allows Defendant Tucker
9 is "deceased and Plaintiff has no way to locate means to serve
10 the deceased." Plaintiff states that he did not intend to
11 prosecute claims against Defendant Glass and Defendant Atkins.

12 **Defendant Garvin**

13 Plaintiff returned a service packet for Defendant
14 Garvin to court on August 25, 2008. The service packet was not
15 forwarded to the Marshal because a motion regarding this
16 Defendant's involvement was pending before the Court. Because
17 Defendant Garvin remains a defendant ordered to answer
18 Plaintiff's existing claims, the Magistrate Judge recommends
19 that the Marshal be ordered to effect personal service on
20 Defendant Garvin pursuant to the service packet returned to the
21 Court on August 25, 2008.

22 Accordingly,

23 **IT IS RECOMMENDED that** Defendants Tucker, Glass, and
24 Atkins be dismissed as defendants in this matter.

25 **IT IS FURTHER RECOMMENDED that** the Court order the
26 United States Marshal to proceed with personal service on
27 Defendants Savage, Lewis and Garvin and that the Court specify
28 a date by which the Marshal must serve these Defendants.

