

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
CIVIL ACTION NO. 3:11CV-P666-H**

DONNY W. LOFTON, Jr.

PLAINTIFF

v.

NURSE MICHELLE

DEFENDANT

MEMORANDUM OPINION

The Court entered an Order that Plaintiff show cause why this case should not be dismissed for lack of service on the only remaining Defendant. Plaintiff has responded that he is in the process of having his files and records mailed from the prior legal aide and that he will need time to find another legal aide at the Kentucky State Reformatory to help with this matter. The response does not outline any plan of action to ensure service.

This case has been pending almost two years. The Court exhaustively attempted to have Defendant Michelle served to no avail. At that point, it became Plaintiff's burden to ensure service. Where service is attempted by the U.S. Marshal but is unsuccessful, Plaintiff must take steps to remedy the defect in service. *Armant v. Stalder*, 351 F. App'x 958, 959 (5th Cir. 2009).

Plaintiff has not explained any efforts he will make to effect service. Given the amount of time Plaintiff already has had in which to ascertain information about Defendant Michelle so that she could be served, the Court finds that any further extension of the time for service would be futile. Accordingly, by separate Order, the Court will dismiss this action against Defendant Michelle without prejudice for failure to serve. *See* Fed. R. Civ. P. 4(m) ("If a defendant is not

served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant . . .”).

Date: October 3, 2013

cc: Plaintiff, *pro se*
4412.009

Handwritten signature of John G. Heyburn II in black ink, written over a circular seal of the United States District Court.

**John G. Heyburn II, Judge
United States District Court**