

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RONNIE K. HONGO (#98420)

VERSUS

CIVIL ACTION

LT. ADAMS, ET AL

NUMBER 09-122-JJB-SCR

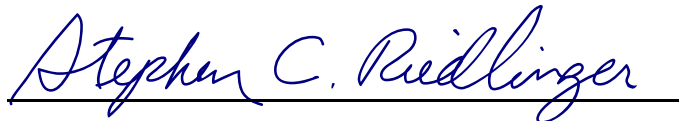
NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the U. S. District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have 14 days after being served with the attached report to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. Failure to file written objections to the proposed findings, conclusions and recommendations within ten days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Baton Rouge, Louisiana, December 14, 2009.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
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MAGISTRATE JUDGE'S REPORT

This case is before the court on the order to the plaintiff to show cause why his claims against defendants Capt. Smith, Capt. Williams and Dr. Ladd should not be dismissed for failure to serve the defendants pursuant to Rule 4(m), Fed.R.Civ.P. Record document number 13.

On November 9, 2009, the plaintiff was ordered to show cause why his claims against defendants Capt. Smith, Capt. Williams and Dr. Ladd should not be dismissed for failure to serve the defendants pursuant to Rule 4(m). Plaintiff failed to respond to the court's show cause order.

Rule 4(m) provides, in pertinent part, as follows:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate time.

Plaintiff bears the burden of showing good cause for failure

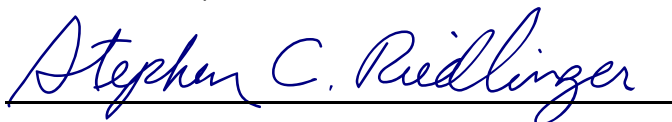
to effect timely service.¹ Plaintiff has not served these defendants within the time allowed under Rule 4(m), nor has he demonstrated good cause for failing to do so.

Even without a showing of good cause, the court may exercise its discretion to extend the time for service. However, a review of the record does not support such an extension.

RECOMMENDATION

It is the recommendation of the magistrate judge that the plaintiff's claims against defendants Capt. Smith, Capt. Williams and Dr. Ladd be dismissed for failure to serve the defendants pursuant to Rule 4(m), Fed.R.Civ.P.

Baton Rouge, Louisiana, December 14, 2009.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE

¹ To establish good cause, a plaintiff must demonstrate at least as much as would be required to show excusable neglect, and simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice. *Lindsey v. United States Railroad Retirement*, 101 F.3d 444, 446 (5th Cir. 1996).