

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

MICHAEL HEBERT (#263630)

CIVIL ACTION

VERSUS

CITY OF BATON ROUGE, ET AL.

NO. 15-850-JWD-RLB

RULING

Before the Court is the Motion to Dismiss filed on behalf of defendants City of East Baton Rouge (“City”), and East Baton Rouge Parish (“Parish”) (R. Doc. 187), and the plaintiff’s Motion for Extension of Time for Service of Charles Bridges (R. Doc. 188). The motion filed on behalf of the City and the Parish is opposed. *See* R. Doc. 189.

The *pro se* plaintiff, an inmate previously confined at the East Baton Rouge Parish Prison (“EBRPP”), Baton Rouge, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against numerous defendants alleging that his constitutional rights were violated due to deliberate indifference to his health and serious medical conditions. The plaintiff seeks monetary, declaratory, and injunctive relief.

The City and Parish defendants seek to dismiss the plaintiff’s claims against them pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure for insufficiency of service of process and for failure to timely perfect service. The City and Parish defendants contend that because service was not made upon Mayor Sharon Weston Broome, in accordance with Rule 4(j) of the Federal Rules of Civil Procedure, the plaintiff’s claims asserted against the City and Parish should be dismissed.

The plaintiff’s Complaint and Motion to Proceed *in Forma Pauperis* were filed on or about December 17, 2015. *See* R. Docs. 1 and 2. After a protracted period, the Court

determined that the plaintiff was entitled to proceed *in forma pauperis* and was not required to pay an initial partial filing fee. *See* R. Docs. 5-10. Inasmuch as the plaintiff was proceeding *pro se* in this case, the Court, pursuant to an Order dated April 13, 2016 (R. Doc. 11), directed the United States Marshal's Office to serve the defendants named herein, wherever found.

Pursuant to normal procedure, the Marshal's Office then forwarded correspondence to the plaintiff directing him to provide service information by filling out a United States Marshal Form 285. The plaintiff returned the completed forms to the Marshal's Office and indicated thereon that the Marshal should serve defendant Dr. Bridges at "2867 Brig General Isaac Smith Blvd," the address for the EBRPP, and should serve the City and Parish defendants at "902 Governmental Building, 222 St. Louis Street." *See* R. Docs. 14 and 16. It appears that the United States Marshal then delivered the Summons and Complaint to these locations where "Thelda Cary, Administrative Assistant, Parish Attorney" and "Lana Price, Assistant to the Warden" received and accepted the Summons and Complaint without any noted limitation on behalf of the City and the Parish, and Dr. Bridges, respectively.

Service on the City, the Parish, and Dr. Bridges was later quashed, and on May 17, 2017, the plaintiff was granted an additional forty-five days to properly serve these defendants. *See* R. Doc. 170. On May 26, 2017, the plaintiff filed a Motion for Production of Complete Service Addresses, wherein he requested that service addresses be provided for the City, the Parish, and Dr. Bridges. *See* R. Doc. 173. On June 26, 2017, the plaintiff's Motion was granted in part and the Marshal was directed to serve the defendants as follows: Personal service upon Dr. Charles Bridges at his place of employment located at 2867 Brig General Isaac Smith Blvd, Baton Rouge, Louisiana, 70807 or wherever found; and service upon the City of Baton Rouge and the Parish of East Baton Rouge through Mayor-President Sharon Weston Broome, 222 St. Louis

Street, Baton Rouge, Louisiana, 70802, either personally, or in her absence upon any of her employees of suitable age and discretion. *See* R. Doc. 181.

The plaintiff completed the required form USM-285 for each defendant with directions to serve the defendants as stated above, and provided an alternate service address for Dr. Bridges. *See* R. Docs. 185 and 186. Nevertheless, the U.S. Marshals Service again served Thelda Cary, an employee of the Parish Attorney, and did not attempt service upon Dr. Bridges at the alternate address provided by the plaintiff.¹

Rule 4 of the Federal Rules of Civil Procedures provides in pertinent part:

“(e) Serving an Individual Within a Judicial District of the United States.

Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process...²

(j) Serving a Foreign, State, or Local Government.

- (1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with [28 U.S.C. § 1608](#).
- (2) *State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:
 - (A) delivering a copy of the summons and of the complaint to its chief executive officer; or

¹ Service upon the City and the Parish was previously quashed after service was made upon Thelda Cary, rather than the Mayor or one of her employees.

² The pertinent Louisiana rules of civil procedure are consistent with Rule 4(e) of the Federal Rules of Civil Procedure. *See* Louisiana Code of Civil Procedure articles 1231-1235.

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.”³

As such, the plaintiff’s service of process, through no fault of his own, was deficient. Defendant Dr. Bridges has not been personally served, and as to the City and Parish defendants, service was not made upon Mayor-President Sharon Weston Broome, the chief executive officer of the City of Baton Rouge and East Baton Rouge Parish.

The District Court has wide discretion in determining whether to dismiss an action for insufficient service, and courts often give *pro se* litigants leeway in correcting defects in service of process. *Lisson v. ING Groep N.V.*, 262 F. App’x. 567, 571 (5th Cir. 2007). Furthermore, inasmuch as a dismissal of the moving defendants at this time could operate as a dismissal with prejudice (because of the running of the applicable limitations period), the Court's authority to dismiss these defendants is limited. With this in mind, and particularly considering the plaintiff was not at fault in the insufficient service complained of, the Court will deny the Motion to Dismiss (R. Doc. 187), and will grant the plaintiff’s Motion (R. Doc. 188) in part. Accordingly,

IT IS ORDERED the Motion to Dismiss (R. Doc. 187) is **DENIED**.

IT IS FURTHER ORDERED that improper service upon the City and the Parish be quashed, and the plaintiff shall have an additional forty-five days from the date of this Order to properly serve the City and the Parish.

³ Louisiana Code of Civil Procedure article 1265 provides, “Service of citation or other process on any political subdivision, public corporation, or state, parochial or municipal board or commission is made at its office by personal service upon the chief executive officer thereof, or in his absence upon any employee thereof of suitable age and discretion. A public officer, sued as such, may be served at his office either personally, or in his absence, by service upon any of his employees of suitable age and discretion. If the political entity or public officer has no established office, then service may be made at any place where the chief executive officer of the political entity or the public officer to be served may be found.”

IT IS FURTHER ORDERED that the plaintiff' Motion (R. Doc. 188) is **GRANTED IN PART**, and the plaintiff shall have an additional forty-five days from the date of this Order to properly serve Dr. Bridges.

IT IS FURTHER ORDERED that the Clerk of Court shall issue summons, and service shall be made upon the City, the Parish, and Dr. Bridges as requested in the attached USM-285 forms completed by the Court. The Clerk of Court is directed to forward a copy of the attached USM-285 forms to the United States Marshals Service.

Signed in Baton Rouge, Louisiana, on October 3, 2017.



**JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

PLAINTIFF Michael Hebert (#263360)	COURT CASE NUMBER 15-cv-850-JWD-RLB
DEFENDANT Charlie Haywood Bridges, MD	TYPE OF PROCESS Summons and Complaint

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
Charlie Haywood Bridges, MD
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
7777 Hennessy Blvd, STE #608, Baton Rouge, LA 70808-4369 *See Special Instructions*

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW Michael Hebert (#263630) Louisiana State Penitentiary Angola, LA 70712	Number of process to be served with this Form 285	1
	Number of parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (*Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service*):

Fold

Fold

If Dr. Bridges cannot be served at the above address, the Marshal is directed by the Court to serve Dr. Bridges wherever found, including at his home address which is available via public records.

Signature of Attorney other Originator requesting service on behalf of:	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE 10/3/17
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	_____	No. _____	No. _____	_____	_____

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (complete only different than shown above)	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy	

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS:

- DISTRIBUTE TO:**
1. CLERK OF THE COURT
 2. USMS RECORD
 3. NOTICE OF SERVICE
 4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
 5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

PLAINTIFF Michael Hebert (#263360)	COURT CASE NUMBER 15-cv-850-JWD-RLB
DEFENDANT City of Baton Rouge and Parish of East Baton Rouge	TYPE OF PROCESS Summons and Complaint

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
 City of Baton Rouge and Parish of East Baton Rouge, through Mayor-President Sharon Weston Broome
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 222 St. Louis St., 3rd Floor, Baton Rouge, LA 70802 *See Special Instructions*

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW Michael Hebert (#263630) Louisiana State Penitentiary Angola, LA 70712	Number of process to be served with this Form 285	1
	Number of parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

The Marshal is directed by the Court to serve Mayor-President Sharon Weston Broome, either personally, or in her absence upon any of her employees of suitable age and discretion. Service should not be made upon Thelda Cary or any other employee of the Parish Attorney.

Signature of Attorney other Originator requesting service on behalf of:	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
			10/3/17

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	_____	No. _____	No. _____	_____	_____

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Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (complete only different than shown above)	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy	

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
					\$0.00

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