

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

MARK MCCURDY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:13-cv-00277-JAW
	)	
DONALD SMITH, et al.,	)	
	)	
Defendants.	)	

**ORDER ON DEFENDANTS' MOTION TO EXTEND TIME TO RESPOND TO  
PLAINTIFF'S COMPLAINT**

On July 26, 2013, Mark McCurdy filed a complaint in this Court for declaratory and injunctive relief against Donald Smith and Betsy Fitzgerald pursuant to 42 U.S.C. § 1983. *Compl.* (ECF No. 1). On October 21, 2013, the Defendants moved to dismiss the Complaint for lack of jurisdiction. *Defs.' Mot. to Dismiss* (ECF No. 12). On the same day, they also filed a motion to extend time to respond to the Complaint until “twenty-one . . . days from . . . the date the Court rules on the motion to dismiss if the ruling is that the Court has subject matter jurisdiction.” *Mot. to Extend Defs.' Time to Resp. to Pl.'s Compl.* (ECF No. 13). Mr. McCurdy has not had time to respond to the motion to extend time, but the Court assumes that he objects to the motion.

The Defendants' motion is largely superfluous. Federal Rule of Civil Procedure 12(a)(1)(A)(i) fixes twenty-one days after a party is served with the

summons and complaint as the day a responsive pleading is due. However, Rule 12(a)(4)(A) provides:

Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) If the court denies the motion or postpones its disposition until after trial, the responsive pleading must be served within 14 days after notice of the court's action.

By rule, therefore, the Defendants are not required to serve a responsive pleading until 14 days after they receive notice of the Court's action on their pending motion to dismiss, if the Court denies it. As the Defendants ask for twenty-one days from the date of the Court's ruling on the pending motion to dismiss, the effect of their motion is to seek to extend the fourteen day period in Rule 12(a)(4)(A) by seven days.

The Court dismisses the motion without prejudice. The Court is well acquainted with Mr. McCurdy from other matters and it is aware that he is especially sensitive to any Court rulings before he has responded. In fact, in another matter when the Court granted what seemed to be a non-controversial motion to stay without first hearing his position, Mr. McCurdy moved for this Judge's recusal on the ground that the Court had treated him "as a non-entity, a mere spectator to these proceeding[s]." *United States v. McCurdy*, 1:06-cr-00080-JAW, *Mot. for Recusal* at 13 (ECF No. 288) (Jan. 14, 2013).

As this motion extends the period for serving a responsive pleading by only seven days and as Mr. McCurdy has not yet had an opportunity to respond, the Court DISMISSES the motion for extension without prejudice. Of course, the

Defendants are free to file a motion to extend the time to respond within the fourteen day period for response if they elect to do so.

The Court DISMISSES without prejudice Defendants' Motion to Extend Defendants' Time to Respond to Plaintiff's Complaint (ECF No. 13).

SO ORDERED.

*/s/ John A. Woodcock, Jr.*  
JOHN A. WOODCOCK, JR.  
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 22nd day of October, 2013