

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MELVIN PETERS,  
Plaintiff,

CIVIL ACTION NO. 08-CV-12676-DT

vs.

DISTRICT JUDGE DAVID M. LAWSON

ELISABETH LINDSY,  
ANN ARBOR HOUSING  
COMMISSION, JASMINE  
PATTON, MARGARET  
ALFORD, MARIA SPENCER,  
DOUGLASS GORDON,  
Defendants.

MAGISTRATE JUDGE MONA K. MAJZOUB

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REPORT AND RECOMMENDATION

**I. RECOMMENDATION:** Dismiss without prejudice Defendants Lindsay, Ann Arbor Housing Commission, Jasmine Patton, Margaret Alford, Maria Spencer, and Douglass Gordon pursuant to Fed. R. Civ. P. 4(m), and dismiss this action.

**II. REPORT:**

Plaintiff filed the instant Complaint on June 23, 2008. (Docket no. 1). On June 26, 2008 Plaintiff was allowed to proceed *in forma pauperis*. (Docket no. 4). In the Complaint, Plaintiff claims that he was discriminated against in housing in violation of 42 U.S.C. § 1983 and other laws. Plaintiff failed to provide any addresses in his Complaint at which the Defendants could be served. The body of Plaintiff's Complaint fails to even list the Defendants by name. Plaintiff simply listed the names of the Defendants on the civil cover sheet. On November 3, 2008 this Court entered an Order for Plaintiff to show cause why these Defendants should not be dismissed due to lack of service of process. (Docket no. 6). Plaintiff failed to respond, and the time for responding has now

expired. All pretrial matters have been referred to the undersigned for action. (Docket no. 5). This matter is now ready for ruling.

The time for service of the summons and complaint is established under Fed. R. Civ. P. 4(m) which provides that service must be made within 120 days after the filing of the complaint. “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.” Fed. R. Civ. P. 4(m). Plaintiff has not effected service on Defendants within the time allowed under Rule 4(m). A plaintiff proceeding *in forma pauperis* is entitled to rely on officers of the Court to effect service. *See Byrd v. Stone*, 94 F.3d 217 (6<sup>th</sup> Cir. 1996). However, a plaintiff may not remain silent and do nothing to effectuate service. *VanDiver v. Martin*, 304 F. Supp. 2d 934, 943 (E.D. Mich. 2004). At a minimum, the plaintiff must request service and attempt to remedy any apparent service defects of which he has knowledge. (*Id.*). By failing to respond in any way to the Court’s Order to Show Cause, Plaintiff has failed to show cause why Defendants should not be dismissed from this action. Defendants should therefore be dismissed without prejudice.

### **III. NOTICE TO PARTIES REGARDING OBJECTIONS:**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505 (6<sup>th</sup> Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve

all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health & Human Servs.*, 931 F.2d 390, 401 (6<sup>th</sup> Cir. 1991); *Smith v. Detroit Fed’n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: March 23, 2009

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served upon Melvin Peters and Counsel of Record on this date.

Dated: March 23, 2009

s/ Lisa C. Bartlett  
Courtroom Deputy