

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

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|-----------------------------------|---|----------------------|
| VERNON WAIT, Register No. 151620, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 08-4012-CV-C-SOW |
| |) | |
| DR. SETHI, et al., |) | |
| |) | |
| Defendants. |) | |

REPORT, RECOMMENDATION AND ORDER

Plaintiff, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. Thereafter, it was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

On July 16, 2008, defendant David Vlach, M.D., filed a motion to dismiss for plaintiff's failure to obtain timely service of process on him, pursuant to Federal Rule of Civil Procedure 4(m). Plaintiff did not respond to the motion within the time limits set by local rule, and on October 23, 2008, he was ordered to submit process forms for service of process on defendants Vlach and A.E. Daniel, M.D., show cause why the claims against those defendants should not be dismissed, or notify the court, in writing, that he did not wish to pursue his claims against those individuals. On October 28, 2008, defendant Daniel also filed a motion to dismiss for lack of service of process.

Plaintiff has not responded to the court's order of October 23, 2008, or to the two motions filed by defendants Daniel and Vlach. Therefore, plaintiff does not appear to oppose the dismissal of those defendants.

Rule 4(m), Federal Rules of Civil Procedure, provides:

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 period.

Plaintiff was granted leave to proceed in forma pauperis on April 9, 2008, and more than 120 days have passed without service of process on defendants Daniel and Vlach. Plaintiff has not responded to the pending motions or court order, has not requested an extension of time for service of process or shown good cause why the time for service should be extended.

Also pending are a motion for an extension of time to file dispositive motions and two additional motions to dismiss. A recommendation for the additional motions to dismiss will be made separately.

IT IS, THEREFORE, ORDERED that the parties are granted an extension of time of ninety days after the district court rules on the pending motions to dismiss to file dispositive motions. [29] It is also

RECOMMENDED that plaintiff's claims against defendants David Vlach, M.D., and A.E. Daniel, M.D., be dismissed, without prejudice, pursuant to Fed. R. Civ. P. 4(m). [19, 25]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 21st day of January, 2009, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge