

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DERRICK ANDERSON,

Plaintiff,

Case # 12-CV-6355-FPG

v.

DECISION & ORDER

DEPUTY JOHN LALLEY, et al.,

Defendants.

Plaintiff Derrick Anderson, a prisoner proceeding *pro se*, was granted permission to proceed *in forma pauperis*. Dkt. # 5. Although a summons was issued on November 30, 2012 to Defendant (former) County Executive Chris Collins, he has not acknowledged service or answered the Complaint. In addition, the summons was not returned to the U.S. Marshal indicating there was an incorrect address.

The Erie County Attorney's Office, by Kenneth R. Kirby, Assistant County Attorney, has appeared in this action on behalf of Erie County Defendants Lalley, Frankowiak, and Howard. The Court hereby requests that Assistant County Attorney Kenneth R. Kirby either accept service on behalf of Defendant Collins, or ascertain the proper address for service on Defendant Collins pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d. Cir. 1997) (*per curiam*).

Attorney Kirby is requested to respond to this Order either by accepting service on behalf of Defendant Collins or providing an address for service on Defendant Collins by January 24, 2014.

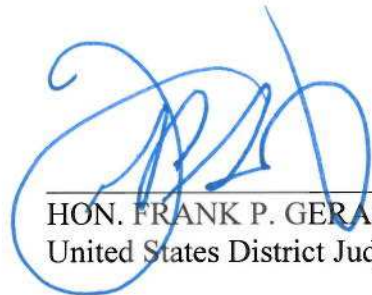
Additionally, as a *pro se* prisoner-litigant proceeding *in forma pauperis*, Plaintiff is "entitled to rely on service by the U.S. Marshals." *Romandette v. Weetabix Co., Inc.*, 807 F.2d 309, 311 (2d

Cir. 1986) (citing former Fed. R. Civ. P. 4(c)(2), now renumbered 4(c)(3)). So long as a prisoner provides the information necessary to identify the defendant, courts have uniformly held that the Marshals' failure to effect service automatically constitutes good cause within the meaning of Rule 4(m) to extend the time to serve a defendant. *See Moore v. Jackson*, 123 F.3d 1082, 1085-86 (8th Cir. 1997); *Byrd v. Stone*, 94 F.3d 217, 220 (6th Cir. 1996); *Dumaguin v. Sec'y of HHS*, 28 F. d 1218, 1221 (D.C. Cir. 1994); *Puett v. Blandford*, 912 F.2d 270, 276 (9th Cir. 1990); *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990).

This Court finds that there is "good cause" to extend the time in which Plaintiff may serve the summons and amended complaint upon Defendant Collins an additional 90 days. Fed. R. Civ. P. 4(m); *see Romandette v. Weetabix Co., Inc.*, 807 F.2d 309, 311 (2d Cir. 1986) (interpreting Rule 4(j), the predecessor subdivision to Rule 4(m)); *Armstrong v. Sears*, 33 F.3d 182, 188 (2d Cir. 1994); *see generally Husowitz v. American Postal Workers Union*, 190 F.R.D. 53, 57-58 (E.D.N.Y. 1999) (collecting cases). As a result, Plaintiff's time in which to serve the summons and amended complaint on Defendant Collins is extended until April 9, 2014.

IT IS SO ORDERED.

DATED: January 10, 2014
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge