

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

David Easley,
Plaintiff

Case No. C-1-06-863

vs

Deborah Nixon-Hughes, et al.,
Defendants

**REPORT AND
RECOMMENDATION**
(Dlott, J.; Hogan, M.J.)

This matter is before the Court on the Ohio Attorney General’s Motion to Dismiss Dr. Moomaw as a Defendant for Failure of Service (Doc. 31). To date, Plaintiff has not filed a response to the Ohio Attorney General’s motion.

On December 19, 2006, Plaintiff filed this action pro se under 42 U.S.C. § 1983 alleging a violation of his constitutional rights. However, to date, Defendant Moomaw, a former state employee or contractor, has not been served with the Complaint in this matter.

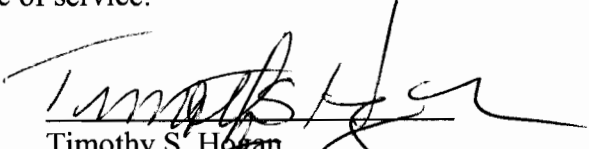
Proper service of process is required in order for this Court to obtain in personam jurisdiction over each defendant. *O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003). Plaintiff bears the burden of exercising due diligence in perfecting service of process and of showing that proper service has been made. *Habib v. General Motors Corp.*, 15 F.3d 72, 74 (6th Cir. 1994); *Jacobs v. University of Cincinnati*, 189 F.R.D. 510, 511 (S.D. Ohio 1999).

Rule 4(m), Fed. R. Civ. P., provides, in pertinent part, as follows:
If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m).

Accordingly, **IT IS HEREBY RECOMMENDED** that Plaintiff’s Complaint be DISMISSED WITHOUT PREJUDICE for failure of service.

Date: 2/10/10


Timothy S. Hogan
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING THE FILING OF
OBJECTIONS TO THIS R&R**

Pursuant to Fed. R. Civ. P. 72(b), within fourteen (14) days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

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