

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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William R. Franklin,  
Plaintiff

vs

Case No. 1:08-cv-466-HJW-TSH  
(Weber, Sr. J.; Hogan, M. J.)

United States Postal Service, et. al.,  
Defendants

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**REPORT AND RECOMMENDATION**

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This matter is before the Court on pro se plaintiff Franklin's Response to the Court's Show Cause Order. (Doc. 50).

Pro se plaintiff Franklin filed this action on July 9, 2008, alleging claims against his former employer, the United States Postal Service, two postal unions, including the American Postal Workers Union, his former health care provider, a mental health counseling center, Cincinnati Counseling Services, Inc., and his former attorney, Lee Hornberger. (Doc. 1). On November 5, 2008, he filed an amended complaint which totals approximately fifty type-written pages, alleging additional claims against these same defendants. (Doc. 14). On April 2, 2009, this Court issued an Order directing plaintiff to show cause why his claims against defendants Lee Hornberger, Cincinnati Counseling Services, Inc., and the American Postal Workers

Union (APWU) should not be dismissed for lack of service pursuant to Fed. R. Civ. P. 4. For the reasons set forth more fully below, the Court recommends that this action be dismissed as to defendants Attorney Lee Hornberger, the APWU and Cincinnati Counseling Services, Inc.

As noted in the Court's April Show Cause Order, Fed. R. Civ. P. 4 requires that a defendant be served with a summons and a copy of the complaint or that defendant waive service thereof, and that:

If 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 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. . . .

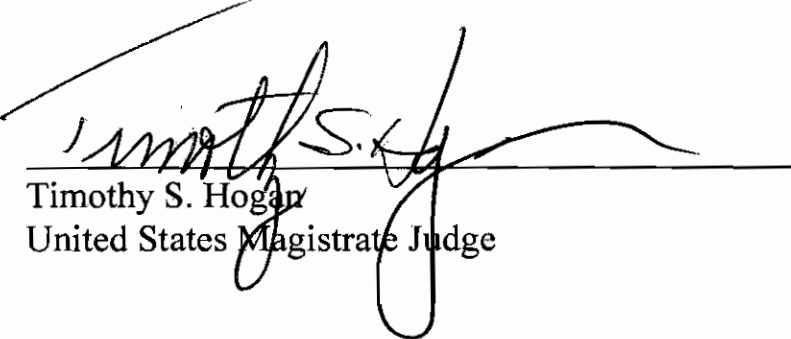
Fed. R. Civ. P. 4(m).

In response to the Court's Show Cause Order, plaintiff essentially argues that he is unfamiliar with the procedural rules and service standards applicable to federal civil cases. Plaintiff also contends that he failed to effectuate proper service, in part, because other defendants who had been served filed motions to dismiss prior to the expiration of the service period. Plaintiff's lack of familiarity with the Federal Rules of Civil Procedure is insufficient to overcome his failure to have properly served these defendants. Plaintiff bears the burden of exercising due diligence in perfecting service of process and showing that proper service has been made. *Habib v. General Motors Corp.*, 15 F.3d 72, 74-5 (6<sup>th</sup> Cir. 1994). In the absence of proper service, the Court lacks *in personam* jurisdiction over the individual defendant. *Amen v. City of*

*Dearborn*, 532 F.2d 554 (6<sup>th</sup> Cir. 1976), *cert. denied*, 465 U.S. 1101 (1984).

**IT IS THEREFORE RECOMMENDED THAT:**

Defendants Lee Hornberger, Cincinnati Counseling Services, Inc., and the APWU be DISMISSED from this action for lack of service pursuant to Fed. R. Civ. P. 4(m).



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Timothy S. Hogan  
United States Magistrate Judge

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**NOTICE**

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on 5-29-09. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

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