

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

EARL KELLY PRINCE, et al.,
Plaintiffs,

Case No. 1:16-cv-419
Barrett, J.
Litkovitz, M.J.

vs.

NATIONAL LABOR RELATIONS
BOARD, et al.,
Defendants.

**SUPPLEMENTAL REPORT
AND RECOMMENDATION
WITH NOTICE**

Plaintiffs Earl Kelly Prince and Ingrid Prince, proceeding pro se, bring this action against the National Labor Relations Board (NLRB) and several current or former employees of the NLRB in their individual capacity. Plaintiffs were granted leave to proceed *in forma pauperis* and filed the original complaint on April 21, 2016. (Docs. 3, 4). Plaintiffs filed an amended complaint on May 20, 2016. (Doc. 6). On December 13, 2016, the Court issued a show cause order notifying plaintiffs that it proposed to dismiss this action against defendants Deborah M.P. Yaffe, Lafe E. Solomon and Roberto Chavarry¹ without prejudice based on plaintiffs' failure to properly serve the complaint on these defendants. (Doc. 19). Plaintiffs were ordered to show cause within 20 days why the complaint should not be dismissed against defendants Yaffe, Solomon, and Chavarry for failure of service. (*Id.*). As of today's date, plaintiffs have not responded to the show cause order and there is no evidence showing these defendants have been served with the complaint.

¹ Plaintiff named "Roberto Chevery" as a defendant, but defendants have indicated that "Chavarry" is the correct spelling.

Proper service of process is required in order for the court to obtain personal jurisdiction over each defendant. *OJ Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003). The plaintiff is responsible for having the summons and complaint served upon defendants within the time period allotted by Rule 4(m). Fed. R. Civ. P. 4(c)(1). Fed. R. Civ. P. 4(m) sets forth the Court's obligation when the plaintiff fails to timely complete service of process. The Rule provides, in pertinent part:


If a defendant is not served within 90 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. . . .

Fed. R. Civ. P. 4(m). Thus, if the plaintiff does not show good cause justifying his failure to timely serve the complaint, the court shall either (1) dismiss the complaint without prejudice, or (2) direct that service of process be effected within a specified time. *Greene v. Venatter*, No. 2:13-cv-00345, 2014 WL 559154, *2 (S.D. Ohio February 11, 2014).

To date, plaintiffs have failed to respond to the Court's show cause order. Plaintiffs have not shown good cause for failure to serve the complaint on defendants Yaffe, Solomon, and Chavarry.

IT IS THEREFORE RECOMMENDED that plaintiffs' complaint against defendants Yaffe, Solomon, and Chavarry be **DISMISSED** without prejudice for failure of service.

Date: 2/9/17


Karen L. Litkovitz
United States Magistrate Judge

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

EARL KELLY PRINCE, et al.,
Plaintiffs,

Case No. 1:16-cv-419
Barrett, J.
Litkovitz, M.J.

vs.

NATIONAL LABOR RELATIONS
BOARD, et al.,
Defendants.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 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 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).