

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Robert L. Hillman,	:	
	:	
Plaintiff,	:	Case No. 2:11-cv-607
	:	
v.	:	JUDGE MICHAEL H. WATSON
	:	Magistrate Judge Kemp
State of Ohio, et al.,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATION

In an order filed on December 15, 2011, the Court noted that the pending motion to dismiss had not been properly served. In that order, defendant O'Brien was directed to serve a copy of his motion to dismiss upon Plaintiff Robert L. Hillman by regular mail, and to file an amended certificate of service indicating the date of mailing. To date, no amended certificate of service has been filed. Thus, the record shows that defendants filed a motion to dismiss on September 26, 2011, and have never served a copy of that motion on the plaintiff.

Fed.R.Civ.P. 5(a) makes service of a document like a motion to dismiss mandatory. When service has not been made, the usual remedy is to strike the filing. See, e.g., Petersen v. Chicago, Great Western Ry. Co., 3 F.R.D. 346 (D. Neb. 1943). In this case, the Court gave defendants a prior opportunity to correct the error by re-serving the motion and filing an amended certificate of service. For whatever reason, they have apparently chosen not to do so. Therefore, it is recommended that the Court strike the motion to dismiss (#8) for lack of service.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp  
United States Magistrate Judge