

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

RANDY LEE WRIGHT,

Plaintiff,

-vs-

CHARLES A. COX, SHERIFF, et al.,

Defendants.

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Case No. 3:10-cv-201

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District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

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**DECISION AND ORDER REGARDING SERVICE OF PROCESS AND SECOND  
AMENDED COMPLAINT**

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This case is before the Court on Plaintiff’s Motion to Correct Process and/or Sufficiency of Service of Process (Doc. No. 19). Plaintiff refers to ¶ 22 of the Answer which reads “Plaintiff Complaint and Amended Complaint should be dismissed due to insufficiency of process and/or insufficiency of service of process (Answer, Doc. No. 10, PageID 76).

On June 2, 2010, the Clerk of this Court issued Summonses in regular form addressed to (1) Charles A. Cox, Sheriff, Miami County Jail, 201 W. Main Street, Troy, Ohio 45313 (Doc. No. 5, PageID 33); (2) Dee Sanders, Jail Administrator, Miami County Jail, 201 W. Main Street, Troy, Ohio 45313 (Doc. No. 5-1, PageID 34); and (3) Miami County Commissioners Office, c/o Head Commissioner, 201 W. Main Street, Troy, Ohio 45313. The Clerk issued the Summonses in compliance with this Court’s Order of May 27, 2010 (Doc. No. 4). On July 13, 2010, the Clerk docketed Returns of Service from the United States Marshal showing service by certified mail of the Summons and Complaint on Sheriff Cox, the Miami County Commissioners, and Dee Sanders (or “Sandy”), all at the address stated (Doc. No. 18). The certified mail was purportedly signed for

on July 2, 2010, by Beverly Mumford. *Id.*.

Under 28 U.S.C. § 1915, the United States Marshal must make service of process on behalf of indigent litigants such as Plaintiff. If process must be re-served, the Marshal will be obliged to do it. Civil service places a strain on the Marshal's resources which are reasonably targeted, as a matter of priority, to fugitive arrests and prisoner transport. Therefore the Court is anxious to avoid re-service if possible. The Court further realizes that the "duty to avoid unnecessary expenses of serving the summons" in Fed. R. Civ. P. 4(d)(1) does not apply to the Miami County Commissioners or to the Sheriff in his official capacity and any party is entitled to insist on proper process and proper service. Nevertheless, in the interest of judicial economy, the Court respectfully requests Defendants to consider waiving the defenses raised in ¶ 22. If they do not wish to do so, they are ordered to file, not later than August 1, 2010, a motion to dismiss or for partial summary judgment on those two defenses to frame the issue promptly for court decision.

Plaintiff's Motion to Correct is denied without prejudice to its renewal once Defendants file such a motion.

Plaintiff has filed an Amended Complaint (Doc. No. 20), purportedly pursuant to Fed. R. Civ. P. 15's permission to do so prior to a responsive pleading. The Amended Complaint was filed July 14, 2010, subsequent to Plaintiff's Answer on June 25, 2010. Moreover, Fed. R. Civ. P. 15 only permits one amendment as a matter of right and Plaintiff had already filed an amended complaint (Doc. No. 8). Accordingly, Plaintiff's second Amended Complaint (Doc. No. 20) is STRICKEN. July 15, 2010.

s/ **Michael R. Merz**  
United States Magistrate Judge