

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

DAVID O. COOPER,

Plaintiff,

Case No.: 3:13-cv-272

vs.

MONTGOMERY COUNTY, OHIO  
SHERIFF'S DEPARTMENT, *et al.*,

District Judge Walter H. Rice  
Magistrate Judge Michael J. Newman

Defendants.

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**ORDER**

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Now before the Court is a motion by *pro se* Plaintiff, a prisoner at the Warren Correctional Institution ("WCI"), for an extension of time to comply with the November 18, 2013 deadline set forth in the Court's October 18, 2013 Order. Doc. 13.

*Pro se* Plaintiff filed his complaint on August 15, 2013, but failed to tender the \$400 filing fee or move to proceed *in forma pauperis* ("IFP"). Doc. 1. Plaintiff also failed to submit the civil cover sheet and the USM Form 285 summons forms for the U.S. Marshall to complete service of process. *Id.* The Court issued a Deficiency Order on August 16, 2013, ordering Plaintiff to either pay the \$400 filing fee or complete an Application and Affidavit by an Incarcerated Person to Proceed Without Prepayment of Fees and Costs, and submit it together with the required prisoner account statement on or before September 16, 2013. Doc. 2. Plaintiff was also ordered to submit the civil cover sheet and summons forms by this date. *Id.*

Plaintiff requested an extension of time to comply with the Deficiency Order and, on September 12, 2013, the Court extended the deadline to October 16, 2013. Docs. 3, 4. The

Court advised Plaintiff that a failure to timely comply with the Deficiency Order could result in the Court recommending that the case be dismissed for failure to prosecute. Doc. 4.

Plaintiff filed his motion for leave to proceed IFP on September 17, 2013, which the Court granted the next day. Docs. 5, 6. The Court reviewed Plaintiff's complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A and determined that dismissal was not warranted. Doc. 6 at PageID 24. The Court held service of the complaint, however, because Plaintiff had failed to submit the civil cover sheet and summons forms. *Id.* The September 18, 2013 Order, together with a civil cover sheet and summons forms, were mailed to Plaintiff at his address then listed on the docket sheet at the Southern Ohio Correctional Facility.

Plaintiff filed a motion for an Order to Show Cause on September 26, 2013, seeking an order for a prison staff member to forward his IFP application. Doc. 7. On September 27, 2013, Plaintiff advised the Court that his address on the docket sheet was incorrect and provided his new address at WCI. Doc. 8. The Court's September 18, 2013 Order granting leave to proceed IFP (doc. 6) and accompanying civil cover sheet and summons forms were returned as undeliverable on October 25, 2013. Doc. 12. The Clerk of Courts re-mailed all documents to Plaintiff at his updated address the same day. *Id.*

The Court denied Plaintiff's motion for an Order to Show Cause as moot on October 1, 2013 because his IFP application had previously been granted. Doc. 9. The Court acknowledged Plaintiff's change of address and ordered the Clerk of Courts to mail all relevant documents to Plaintiff at his new address. *Id.* at PageID 28. Finally, the Court reminded Plaintiff of the October 16, 2013 deadline to submit his civil cover sheet and summons forms, and again advised Plaintiff that a failure to comply could result in the Court recommending the dismissal of his case. *Id.* at PageID 27.

Plaintiff then filed another motion for an extension of time to comply with the Deficiency Order, advising the Court that he was then at the Ohio State Medical Center, not WCI. Doc. 10. The Court again granted Plaintiff an extension, affording him until November 18, 2013 to file his civil cover sheet and summons forms. Doc. 11. Yet again, the Court advised Plaintiff that a failure to submit these documents could result in the dismissal of his case. *Id.*

Now pending before the Court is Plaintiff's third motion for an extension of time to submit his civil cover sheet and summons forms. Doc. 13. Although docketed on November 19, 2013, Plaintiff's motion is dated November 14, 2013.<sup>1</sup> *Id.* Pursuant to the prisoner mailbox rule, the motion is deemed filed when it is submitted to prison officials for mailing. *See Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008); *Richard v. Ray*, 290 F.3d 810, 813 (6th Cir. 2002) (per curiam). In support of his motion, Plaintiff advises the Court that he recently had surgery, rendering him unable to work on his case and without access to necessary materials. Doc. 13. Plaintiff advises the Court that he expects to remain in the hospital for approximately one month. *Id.*

For good cause shown, Plaintiff's motion for an extension of time (doc. 13) is **GRANTED**, and Plaintiff is afforded an additional forty-five days, *i.e.*, on or before **January 6, 2014**, in which to file his civil cover sheet and summons forms. Plaintiff is again **ADVISED** that failure to comply with this Order could result in the Court recommending dismissal of his case.

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<sup>1</sup> The Court notes that Plaintiff, in violation of Fed. R. Civ. P. 5(d), failed to include a certificate of service on his motion certifying that he mailed a copy to counsel for Defendants. Plaintiff is **ADVISED** that he must mail a copy of each filing to counsel for Defendants and must include a certificate of service indicating that he has done so. Failure to do so could result in the Court striking the filing.

Pursuant to Fed. R. Civ. P. 4(m), a complaint must be served within 120 days after it is filed. Because Plaintiff filed his complaint on August 15, 2013, service ordinarily should have been completed by December 13, 2013. Mindful that the extension of time afforded to Plaintiff extends beyond this deadline, it is further **ORDERED** that Plaintiff complete service of process on all defendants on or before **February 6, 2014**. Plaintiff is **ADVISED** that failure to timely complete service of process by February 6, 2014 will provide another basis for the Court to recommend dismissal of his case and/or dismissal of individual defendants not then served.

Plaintiff is also **ORDERED** to immediately notify the Court, in writing, of any and all changes in his address and/or place of incarceration or medical treatment. A copy of such a filing shall be served upon opposing counsel. *See supra* note 1.

**IT IS SO ORDERED.**

November 20, 2013

s/ **Michael J. Newman**  
United States Magistrate Judge