

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RASHIKA PORTER,

Plaintiff,

20cv1588

ELECTRONICALLY FILED

v.

ALLEGHENY COUNTY, ET AL.,

Defendants.

**Memorandum Order Affirming Report and Recommendation (Doc. 41) and Dismissing
Certain Defendants for Plaintiff's Failure to Effectuate Service**

This is a prisoner civil rights case that was filed on October 21, 2020, and the current iteration of the operative complaint (Second Amended Complaint was filed on May 10, 2021 at Doc. 27) is the subject of a pending Motion to Dismiss for failure to state a claim upon which relief may be granted, which is not addressed in the instant Order. Doc. 32.

On October 14, 2021, United States Magistrate Judge Patricia L. Dodge to whom this case is currently referred for pretrial proceedings, filed a Report and Recommendation (doc. 41) wherein she recommends that that the Court dismiss certain Defendants for failure to effectuate timely service pursuant to Fed. R. Civ. P. 4(m), without prejudice. Magistrate Judge Dodge astutely raised this deficiency initially *sua sponte*, pursuant to 28 U.S.C. Section 1915(a), and issued a Rule to Show Cause as to why certain Defendants should not be dismissed from this case for Plaintiff's failure to make timely service, or to request an extension thereof. Doc. 40. Objections to this Report and Recommendation were due by October 28, 2021, and as of this date, no objections have been received by the Court.

After a *de novo* review of the docket, the Rule to Show Cause, and the Report and Recommendation recommending that Defendants Nancy Park, Donald Stechschulte, Jonathan Davis and Maria Chrzastowska be dismissed without prejudice for Plaintiff's failure to serve them within 90 days after the Second Amended Complaint was filed:

AND NOW, this 17th day of November, 2021.

IT IS HEREBY ORDERED that the claims against Defendants Nancy Park, Donald Stechschulte, Jonathan Davis and Maria Chrzastowska are dismissed without prejudice for failure to make service within 90 days after the Second Amended Complaint was filed. IT IS FURTHER ORDERED that the Report and Recommendation (doc. 41) filed by the Magistrate Judge on October 14, 2021, is adopted as the Opinion of the Court.¹

BY THE COURT:

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel

¹ The Court notes that Magistrate Judge Dodge has scheduled an additional telephonic status conference for 11/24/21 (doc. 44), which this Court surmises may address several remaining issues affecting the clear path forward given the unusual procedural posture of this case: namely, the status of the pending Motion to Dismiss, and the effect thereof of any proposed "Third" Amended Complaint, the issue of the potential stay of this litigation and/or discovery schedule, and also, the matter of whether Plaintiff intends to identify and proceed against the one remaining John Doe Defendant One that he mentioned at the prior status conference on 9/3/21. The resolution of this issue affects, among other things, the parties pending Notices ([doc. 15](#) and [doc. 18](#)) electing to proceed before a Magistrate Judge, or seek the random selection of a District Judge (the undersigned). See also, Minute Entry of 9/3/21. This Court would therefore request Plaintiff to set forth his position, within a truncated time-period set forth within Magistrate Judge Dodge's considered discretion, on the identification of the alleged John Doe One, and his or her legal counsel, who would then be in a position to proceed with the consent to the Magistrate, the election of a District Judge, or to drop the remaining unidentified John Doe party from this litigation, thus allowing either Magistrate Judge Dodge, or the undersigned, to timely move forward before the appropriate requested member of this Court.