

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

ROBERT W. KORTMAN : CIVIL ACTION
: :
v. : :
: :
WARDEN GUARINI, MAJOR EDWARD : :
KLINOVSKI, SARGEANT RAYMOND : :
HENHLEY, CORRECTION OFFICER : :
STEVEN NAPOLITAN, CORRECTION : :
OFFICER DALE BYRD, CORRECTION : :
OFFICER JOSHUA LIPMAN and : :
CONSTABLE ANDREW MEASE : NO. 04-04132-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 19, 2005

Plaintiff is acting *pro se*. He served the summons and complaint upon each of the defendants by certified mail, and has duly provided proof of such service. Unfortunately, he apparently was not aware that he was required to cause the summons and complaint to be personally delivered to the defendants, rather than mailed to them. An attorney has entered an appearance for all but one of the defendants, and has filed a motion to dismiss the complaint with prejudice, because service has not been effected within the time specified by Federal Rule of Civil Procedure 4(m). It seems probable that the statute of limitations has expired by this time. I conclude that the motion to dismiss exalts form over substance, since it is very clear that the moving defendants actually received the complaint soon after it was filed.

Under the circumstances, plaintiff will be afforded a further period of time in which to complete service which is technically correct, if the defendants continue to insist upon it. If, on the other hand, the moving defendants waive the requirement of personal service (as contemplated by the Federal Rules) and simply respond to the complaint, they can avoid the imposition of costs which plaintiff may sustain in achieving service.

An Order follows.

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ORDER

AND NOW, this 19th day of April 2005, upon
consideration of defendants' motion to dismiss for improper
service of process, and plaintiff's response, IT IS ORDERED:

1. Moving defendants may, within 10 days, file of record
their written waiver of service of process, and accept as valid
the certified mail service which has already occurred.

2. Unless moving defendants file such a waiver within that
time period, plaintiff will be required to make personal service
of the complaint and summons upon them, and thereafter submit
proof of such service. In that event, moving defendants may be
held liable to reimburse plaintiff the additional costs of such
service.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.