

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HOWARD LEE GORRELL,	*
	*
<i>Plaintiff,</i>	*
v.	*
	Civil Action No: WDQ 11-CV-2975
MARTIN O'MALLEY	*
	*
<i>Defendant.</i>	*

* * * * *

OPPOSITION TO MOTION FOR ENTRY OF JUDGMENT BY DEFAULT

The Honorable Martin O'Malley, by counsel, opposes the entry of default in this case, and in support thereof states as follows:

1. The Motion for Entry of Judgment by Default was mailed by Mr. Gorrell on December 14, 2011, to Elizabeth F. Harris, Chief Legal Counsel in the Office of the Governor and was received by that office on December 16, 2011.
2. The Office of Legal Counsel forwarded the Motion for Entry of Judgment by Default to the Office of the Attorney General on the same day.
3. The Motion for Entry of Judgment by Default was the first pleading in this case served on either the Office of Legal Counsel or the Attorney General. Although representatives of the Office of Attorney General were aware that Mr. Gorrell had filed his complaint, the complaint itself has to date not been served on either Office of Legal Counsel or the Attorney General.
4. Federal Rule of Civil Procedure (j)(2) requires that service of a summons and

complaint on a state government must be made by (A) delivering a copy to its chief executive officer; or (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such defendant.

5. Maryland Rule 2-124 provides that service upon the State of Maryland is made by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals.

6. Maryland Rule 2-121(a) provides that service may be made on an entity other than an individual (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; or (2) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting "Restricted Delivery – show to whom, date, address of delivery."

7. Mr. Gorrell's affidavit does not establish that the Complaint in this case was served on the Attorney General; in fact, Mr. Gorrell expressly admits that he has no proof of service. The affidavit also does not state that the summons and complaint were delivered to Governor Martin O'Malley.

8. The complaint in this case has not been served under the applicable law and Mr. Gorrell is unable to demonstrate the contrary. Nevertheless, in the interest of expediting this matter, the Governor simultaneously files with this Opposition a Motion to Dismiss, along with a Motion for an Expedited Litigation Schedule.

For the above reasons, the Motion for Entry of Judgment by Default should be denied.

Respectfully submitted,
DOUGLAS F. GANSLER

