

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

FILED \_\_\_\_\_ ENTERED \_\_\_\_\_  
LODGED \_\_\_\_\_ RECEIVED \_\_\_\_\_

JAN 04 2011

BY PTC  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

HOWARD LEE GORRELL )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MARTIN O'MALLEY, )  
 in his Official Capacity as )  
 Governor of the State of Maryland )  
 )  
 Defendant. )  
 )

Civil Action No. 1:11-CV-02975 (WDQ)

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION  
TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [1][2]

Plaintiff Howard Lee Gorrell (hereinafter "Gorrell") hereby replies to Defendant Martin O'Malley's Opposition to Plaintiff's Motion for Entry of Judgment by Default (hereinafter "Defendant's Opposition") and states the following:

1. In the Defendant's Opposition, Defendant Martin O'Malley (hereinafter "Governor") claimed that "the [Gorrell's] itself has to date not been served on either Office of Legal Counsel or the Attorney General." (Doc. No.15, Paragraph 7). The filing date of the Defendant's Opposition was December 22, 2011.

Service of Process

2. On November 4, 2011, the Court issued the order granting Gorrell's Motion for Leave to Proceed in *forma pauperis*; and granting Gorrell twenty one to complete and return

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[1] Because Plaintiff is acting *pro se*, the documents which he has filed in this case are held to a less stringent standard than if they were prepared by a lawyer and therefore, they are construed liberally. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). *Davis v. Dimensions Health Corp.*, 639 F. Supp.2d 610, 613 (D. Md. 2009)

[2] Plaintiff's Motion for Appointment of Counsel was denied without prejudice due to the lack of proof of service on December 15, 2011 (Doc. No. 10)

Form USM-285/United States Marshals Service Process Receipt and Return. (Doc. No. 4). The Court informed Gorrell that the Court must direct the United States Marshals Service to effectuate service of process. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3); see *Robinson v. Clipse*, 602 F.3d 605, 608 (4th Cir. 2010) ("In *forma pauperis* plaintiffs must rely on the district court and the U.S. Marshals Service to effect service of process according to 28 U.S.C. § 1915.").

3. On November 10, 2011, Gorrell drove to the Greenbelt Division of the United States District Court for the District of Maryland and submitted to the Clerk's Office the signed form. (Doc. No. 8, Attachment #1). It was addressed to Elizabeth Harris, Chief Legal Counsel, Office of Governor, Shaw House, 21 State Circle, Annapolis Md 21401-1925.

4. On November 18, 2011, the Court issued Summons. (Doc. No. 8, Attachment #2)

5. Therefore, the length of time between the issuing date of the Summons (November 18, 2011) and the filing date of the Defendant's Opposition (December 22, 2011) was 34 days or 4.9 weeks. [3]

#### **Stalling in the U.S. Marshals Services**

6. After testifying before the Governor and his Governor's Redistricting Advisory Committee on the Maryland Legislative Redistricting in Annapolis on the same date on Thursday, December 22, 2011, Gorrell drove to the Greenbelt Division of the United States District Court for the District of Maryland.

7. Due to his deafness, Plaintiff wrote to a clerk at the front desk:

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[3] Length of Time Between Two Dates at <http://www.inkplant.com/tools/length-of-time-between-two-dates.php> (last visited January 3, 2012)

PLAINTIFF: Please prove me that U.S. Marshall delivered Summons to Defendant of the Case # 1:11-CV-02975 (WDQ)

CLERK: We have not received from the Marshall the return receipt for the summons in this case.

PLAINTIFF: Where is the office of U.S. Marshall?

CLERK: Down one level to the first floor – on the right – door is labeled.

8. In the Greenbelt Office of the United States Marshals Service, Plaintiff wrote to a personnel at the front desk. She called the deputy to locate the missing summons.

The deputy wrote back:

MARSHAL: You write down name of Defendant for me.

Plaintiff showed the marshal a copy of his other motion.

PLAINTIFF: Where is summons? Summons was issued on November 18<sup>th</sup>.

MARSHAL: Let me make a phone call. I don't recall, or have a record of this one. It may have gone to our Balt's office.

Five minutes later, the deputy resumed writing.

MARSHAL: Ok. I knew I would have remembered a summons for the Governor. It would have gone to Balt as they do Annapolis. I just had a dep. Check the log book up there and no record of it. The girl to call is Kim Zimmerman 410-962-7569. I tried calling – got no answer. You can try her, or have someone else do it for you ... or I can keep trying tomorrow & next week. Then email you. It's your call.

A phone rang. The deputy returned to me and marked off the recent comment.

MARSHAL: Ok – It is in Baltimore. It's going to be mailed tomorrow for receipt & return. One to O'Malley, and one to his Chief Legal [Counsel]. Kim Zimmerman 410-962-7569 is the Admin [blurry word] doing.

See Exhibit A for the verification.

9. Therefore, the length of time between the issuing date of the Summons (November 18, 2011) and Gorrell's visit with the Marshals Service Office (December 22, 2011) was 34 days or 4.9 weeks. [3]

**Stalling in the Office of the Attorney General**

10. On December 27, 2011 at 10:00 am EST, Gorrell called the Baltimore office of the United States Marshals Service via the AT&T relay, which enables standard telephone users to communicate with deaf, hard-of-hearing, deaf blind, or speech-disabled people who use a TTY (text telephone) or a computer. He asked for the latest status of this Summons. Kathy Zimmerman said, "It was sent out last Friday [December 23, 2011], I'm waiting for the green card to be sent back to me." (The green card is known as the Return of Service."). See Exhibit B for the verification.

11. This morning (January 3, 2012) at 8:40 am EST, Gorrell called the Baltimore office of the United States Marshals Service via the AT&T relay again. Kathy Zimmerman said, "Umm I have not gotten any of the green cards back from that case, yet I'm still waiting on them". See Exhibit C for the verification.

12. There is no record of "SUMMONS Returned Executed" in this case as of January 3, 2012 at 2:30 pm.

13. There is no record of "SUMMONS Returned Executed" in the case of *Fletcher v. Lamone*, which was a separate challenge to the congressional redistricting plan that was filed with this Court on November 18, 2011. See *Fletcher v. Lamone*, Civ. No. RWT-11-3220 (D. Md. Nov.18. 2011).

14. There is no record of "SUMMONS Returned Executed" in the case of *C. James*

*Olson, et al vs Martin O'Malley*, which was a separate challenge to the congressional redistricting plan that was filed with the Maryland Circuit Court for Anne Arundel County on November 22, 2011. *See Olson v. O'Malley*, Civ. No. 02C11165635 (Nov.22, 2011). [4]

15. Therefore, the length of time between the issuing date of the Summons (November 18, 2011) and today (January 3, 2012) is 46 days or 6.6 weeks. [3]

#### **Protection for the Plaintiff**

16. Because he has relied on the United States Marshals to effectuate service, Gorrell, as an in forma pauperis plaintiff, should not be penalized for a delay caused by the court's consideration of his complaint. *Robinson v. Clipse*, 602 F.3d 605, 608 (4th Cir. 2010).

#### **Awareness of the Gorrell v. O'Malley case**

17. In the Defendant's Opposition, Defendant Martin O'Malley (hereinafter "Governor") claimed that "Although representatives of the Office of Attorney General were aware that Mr. Gorrell had filed his complaint, . . ." (Doc. No.15, Paragraph 7).

18. The filing of Gorrell's complaint with the United States District Court was heavily publicized. An Associated Press article about his filing has 423 results in the Google Search. [5]

19. In the Defendant's Opposition, Defendant Martin O'Malley (hereinafter "Governor") claimed that "The Motion for Entry of Judgment by Default was the first pleading

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[4] Maryland Judiciary Case Search website at <http://casesearch.courts.state.md.us/inquiry>. (last visited January 3, 2012)

[5] Brian Witte, "Smithsburg resident challenges Congressional redistricting map in court," *Herald-Mail* (October 27, 2012)(available at <http://www.herald-mail.com/news/local/hm-smithsburg-resident-challenges-congressional-redistricting-map-in-court-20111027,0,4779973.story>) (last visited January 3, 2012)

in this case served on either the Office of Legal Counsel or the Attorney General.”. (Doc. No.15, Paragraph 3). It is not true because Gorrell’s Motion for Appointment of Counsel was the first pleading in this case and was served on the Office of Legal Counsel on November 14, 2011. (Doc. No. 4).

**Deadline by January 20, 2012**

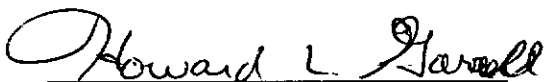
20. On December 22, 2012, Governor filed a Motion for Expedited Litigation Schedule with this Court and respectfully requested that the Court established a scheduled for this litigation that will permit it to be resolved by January 20, 2012. (Doc. No. 14). On December 27, 2011, Gorrell mailed his Response to Defendant’s Motion to the Clerk (Doc. No. \_\_\_\_\_) and a copy to Govenor. In his response, Gorrell has concurred to Defendant’s Motion for Expedited Litigation Schedule.

21. On December 22, 2012, Gorrell also filed with this Court a Motion to Convene Three-Judge Court pursuant to 28 U.S.C. § 2284.

22. Today Gorrell files his Second Motion for Appointment of Counsel, along with his Reply to Defendant’s Opposition to Gorrell’s Motion for Entry of Judgment by Default.

WHEREFORE, Plaintiff respectfully prays that this Court will act quickly for the next court proceeding.

Respectfully submitted this 3rd day of January 2012.



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January 2012, one copy of the Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Entry of Judgment by Default was mailed, postage prepaid, to Dan Friedman, Assistant Attorneys General, Room 104, Legislative Services Building, 90 State Circle, Annapolis, Maryland 21401-1991.



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