

**Docket Sheet
and Contents
of the
Postal Civil
Complaint**

Electronic Case Filing System
District of Utah (Central)
CIVIL DOCKET FOR CASE #: 2:01-cv-00179-DAK

Mauney v. USPS, et al
Assigned to: Judge Dale A. Kimball
Demand: \$51,000,000
Cause: 28:2201 Declaratory Judgment

Date Filed: 03/20/2001
Date Terminated: 01/11/2002
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

Fred W. Mauney, Jr

represented by **Fred W. Mauney, Jr**
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006
(801)963-8731
PRO SE

V.

Defendant

United States Postal Service

represented by **Kirk C. Lusty**
6021 S KAMAS DR
SALT LAKE CITY, UT 84118
(801)891-6839
Email: kirk.c.lusty@usps.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Postmaster General

represented by **Kirk C. Lusty**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Postal Inspector

represented by **Kirk C. Lusty**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Local Branch Main Office Inspector

represented by **Kirk C. Lusty**

(See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/20/2001	<u>1</u>	Motion by Fred W. Mauney Jr to proceed in forma pauperis (jmr) (Entered: 03/20/2001)
03/20/2001	<u>2</u>	Order to proceed in forma pauperis. Signed by Judge Boyce, 3/19/01 cc: pla (jmr) (Entered: 03/20/2001)
03/20/2001	<u>3</u>	Complaint filed, assigned to Judge Dale A. Kimball Lodged/Filed on: 3/16/01 (jmr) (Entered: 03/20/2001)
03/28/2001	<u>4</u>	Order of Reference as authorized by 28 636(b)(1)(B). Case to be handled by magistrate judge upto and including the R&R on any dispositive motions. Signed by Dale A. Kimball on 3/28/01 (jmr) (Entered: 03/29/2001)
03/28/2001	<u>5</u>	Motion by Fred W. Mauney Jr for official service of process (jmr) (Entered: 03/29/2001)
04/09/2001	<u>6</u>	Case referred to Judge Samuel Alba cc: atty (jmr) (Entered: 04/09/2001)
05/17/2001	<u>7</u>	Motion by USPS, US Postmaster Gen, Postal Inspector, Local Br Main Off to quash the pla's attempt to affect service (jmr) (Entered: 05/17/2001)
05/17/2001	<u>8</u>	Memorandum by USPS, US Postmaster Gen, Postal Inspector, Local Br Main Off in support of [7-1] motion to quash the pla's attempt to affect service (jmr) (Entered: 05/17/2001)
05/17/2001	<u>9</u>	Declaration of Kirk C. Lusty Re: [7-1] motion to quash the pla's attempt to affect service (jmr) (Entered: 05/17/2001)
06/05/2001	<u>10</u>	Order granting [5-1] motion for official service of process by the US Marshall on Bill Susha, US Postal Service, F.J. Marion, William Henderson and Kenneth Weaver. It is further ordered that pla shall serve upon dfts, a copy of every pleading or documents submitted to the court. He shall include a certificate of service with every document submitted to the court. Any paper without a certificate of service will be disregarded by the court. Signed by Judge Samuel Alba, 6/1/01 cc:atty (jmr) (Entered: 06/07/2001)
06/05/2001	<u>11</u>	Order, for service re: directing parties as to service of pleadings signed by Judge Samuel Alba, 6/1/01 cc:atty (jmr) (Entered: 06/07/2001)
07/09/2001	<u>12</u>	Return of service executed re: Summons & Complaint served on Bill Susha c/o Sheila Young on 7/2/01. (jmr) (Entered: 07/10/2001)
07/09/2001	<u>13</u>	Return of service executed re: Summons & Complaint served on US Postal Service, Kenneth C. Weaver, Postal Inspector, F.J. Marion, William J. Henderson on 6/22/01 by Faye R. Hassan, Legal Clerk. (jmr) (Entered: 07/10/2001)
08/30/2001	<u>14</u>	Motion by USPS, US Postmaster Gen, Postal Inspector, Local Br Main Off to

		dismiss for lack of personal jurisdiction (ce) (Entered: 08/30/2001)
08/30/2001	<u>15</u>	Memorandum by USPS, US Postmaster Gen, Postal Inspector, Local Br Main Off in support of [14-1] motion to dismiss for lack of personal jurisdiction (ce) (Entered: 08/30/2001)
08/30/2001	<u>16</u>	Second Declaration of Kirk C. Lusty Re: [14-1] motion to dismiss for lack of personal jurisdiction (ce) (Entered: 08/30/2001)
10/29/2001	<u>17</u>	Ex parte motion by Fred W. Mauney Jr to extend time to answer or otherwise plead to defendants' motion to quash from 09/30/01 to 11/30/01 (asp) (Entered: 10/30/2001)
10/31/2001	<u>18</u>	Order granting [17-1] ex parte motion to extend time for pla to answer or otherwise plead to defendants' motion to quash from 09/30/01 to 11/30/01 signed by Judge Samuel Alba, 10/31/01 cc:atty (alt) (Entered: 11/01/2001)
11/01/2001	<u>19</u>	Memorandum by USPS, US Postmaster Gen, Postal Inspector, Local Br Main Off in opposition to [17-1] ex parte motion to extend time to answer or otherwise plead to defendants' motion to quash from 09/30/01 to 11/30/01 (ce) (Entered: 11/02/2001)
12/06/2001	<u>20</u>	Request for Ruling by defendant USPS, defendant US Postmaster Gen, defendant Postal Inspector, defendant Local Br Main Off RE: [14-1] motion to dismiss for lack of personal jurisdiction (blk) (Entered: 12/06/2001)
01/11/2002	<u>21</u>	Order granting [14-1] motion to dismiss for lack of personal jurisdiction; case is dismissed w/prej, each pty to bear own costs. Signed by Judge Dale A. Kimball, 1/10/02 cc:atty (alt) (Entered: 01/11/2002)
01/11/2002		CASE NO LONGER REFERRED TO Judge Samuel Alba (alt) (Entered: 01/11/2002)
01/11/2002		Case closed per order no. 21 (alt) (Entered: 01/11/2002)

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.

FILED

CLERK, U.S. DISTRICT COURT

United States District Court

20 MAR 01 PM 1:33

DISTRICT OF UTAH

BY: NO

DEPUTY CLERK

Central Division for the District of Utah

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Fred W. Mauney

v.

US Postal Service et. Al.

Case Number: 2:01cv179K

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

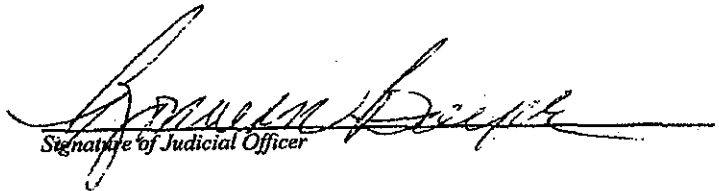
IT IS ORDERED that the application is:

GRANTED.

The clerk is directed to file the complaint.

DENIED, for the following reasons:

ENTER this 19th day of March, 20 01


Signature of Judicial Officer

Name and Title of Judicial Officer

2

jmo

United States District Court
for the
District of Utah
March 20, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, UT 84101-2006
801-963-8731

FILED
CLERK, U.S. DISTRICT COURT
20 MAR 01 PM 2:09
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

RECEIVED CLERK
MAR 16 2001
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH-CENTRAL DIVISION

FRED W. MAUNEY JR.
IN PROPRIA PERSONAM

Plaintiff,

vs

THE UNITED STATES
POSTAL SERVICE, POST MASTER
GENERAL, POSTAL INSPECTOR,
LOCAL BRANCH MAIN OFFICE
INSPECTOR et al.

Defendants.

COMPLAINT

CIVIL ACTION NO _____

2:01CV00179K

I. JURISDICTION

1./ This is a civil action filed pursuant to and in accordance with the jurisdiction invoked therein 28 USC § 1331, 1339, 1346-1442 and 2671, plaintiff also requests declaratory relief under 28 USC § 2201 and 2202. This court is herein authorized to invoke any other jurisdiction necessary to this cause of action. Plaintiff further requests that this complaint be read with the liberality to be accorded pleadings of litigants not represented by counsel.

II. VENUE

2./ Plaintiff Fred W. Mauney resides in Salt Lake City, Utah.

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3./ Defendant, The United States Postal Service, either live, work or are doing business in Salt Lake County, state of Utah.

III. PLAINTIFF

4./ Plaintiff Fred W. Mauney, herein after referred to as plaintiff, or by surname, to move this honorable court for relief. Plaintiff was at all times herein affected by the actions of the defendant. Their actions are still affecting the plaintiff adversely to this date. Plaintiff also resides on the streets of Salt Lake City, Utah. Mailing address 50 W Broadway, Suite 100, Salt Lake City, Utah 84101-2006.

IV. DEFENDANTS

5./ United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 2060-0010.
(Post Master General, Postal Inspector, Local Branch Main Office Inspector)

FACTS

6./ On May 21, 1997, in the early morning plaintiff accompanied Cory Karpakis to his storage house to work, after completing several hours of work, at approximately 4:00 a.m. plaintiff decided it was time to leave. " We left the storage shed and headed to the northbound on-ramp of I-15.

At this point we noticed two cars were stopped approximately 200 yards down the road. The freeway was dark and desolate with no other traffic to be seen. Cory asked me, "what do you think Freddy, should we stop". Plaintiff replied "sure, let's stop, somebody could need help, especially this time of the morning".

As we approached the two stopped cars I saw a man standing at the back of one of the cars and I noticed he had a gun in his hand. This man I later learned was Jose Garcia-

Miramontes. I wondered what we had gotten ourselves into and I looked around for other people. Cory pulled up along side of the stopped car, apparently not seeing the man with the gun at the back of the car. I heard somebody ask Cory "what do you want". Cory replied, "does anyone need some help". The voice replied "no". Cory happened to look back at the stopped car and turned to me and said "Fred, I think someone is dead in that car! I see the blood". I whispered, "Cory drive the truck". The next thing we heard was a gunshot, Cory took off, and we heard more gunshots. As we were trying to get away a car came up beside us and all of a sudden started ramming us from the drivers side. Damn! It's the killer(s) with guns, I shouted. The car bounces off the truck and comes back, hitting us again, this time spinning out in the medium and halting in a cloud of dust. Cory and I head off the freeway and find a phone. Cory called 911 and we wait for the police. A Utah Highway Patrol officer arrived and we explained what we had been through and gave the officer a description of the cars involved. The officer asked Cory to describe what he saw, so I walked back to the truck and sat down to wait. The officer handcuffed Cory and he came over to the truck and he handcuffs me. We were then transported in handcuffs, not to the crime scene or the police station, but to an apartment complex where there was an abandoned car fitting our description, we were left standing in handcuffs for all passers-by to see on the side of the road.

A few hours later the authorities captured Miramontes as he was trying to make good his escape. The capture of Miramontes was a direct result of our eyewitness testimony. Our eyewitness testimony not only aided the State in Miramontes arrest, it ultimately

played a key role in his conviction of murder of a US Postal worker, conviction of attempted murder of myself and Cory Karpakis and car theft.

Further, I believe the facts will show the reason we have been denied a reward for our actions are unwarranted and suspicious.

V. LEGAL CLAIMS

6./ The facts related above disclose a concerted and systematic effort by the defendant and its agents to deprive plaintiff of his constitutionally secured rights including but not limited to, those enumerated in the succeeding paragraphs.

7./ That plaintiff was informed of said reward and that he qualified for it.

8./ That plaintiff inquired of said reward and was informed that no reward would be forthcoming until after said conviction.

9./ That after said conviction, June 8, 1998, plaintiff was now informed he was ineligible for said reward.

10./ That plaintiff followed tort procedures and wrote a letter to the US Postal Service September 20, 1999 and received a reply letter dated October 8, 1999.

11./ That fraud is being perpetrated upon plaintiff by the US Postal Service to secure a conviction while denying said reward due to events surrounding the identification and arrest of said murderer.

VI. CAUSES OF ACTION

12./ That the US Postal Service does in fact post on the walls or bulletin boards of its offices a \$100,000 dollar reward for the help in the arrest and conviction for the manslaughter or murder of a postal worker.

13./ That said reward is a type of contract with the public for whomsoever may fill or meet its requirements.

14./ That plaintiff, Fred W. Mauney did fulfill said requirements and therefore is entitled to said reward and seeks relief from the court.

VII. CLAIM FOR DAMAGES

15./ Plaintiff claims for:

1. Actual One Hundred Thousand dollars (\$100,000) in general damages.
2. Five Million dollars (\$5,000,000) in compensatory damages.

VIII. CLAIM FOR RELIEF

16./ That this Court hold a hearing to show cause or to order the US Postal Services to pay said reward or set a trial date to let a jury decide.

17./ That this Court set a trial date so a jury can hear the evidence and make a determination as to compensatory damages award for failing to pay said reward.

18./ Plaintiff respectfully requests such other and further relief that the Court deems to be appropriate and just.

VERIFICATION

Fred W. Mauney, being first duly sworn according to law, deposes and says that his mailing address is 50 West Broadway, #100, Salt Lake City, Utah 84101-2006; and that he is the plaintiff in the foregoing complaint; and that he has read the foregoing complaint and knows the contents thereof and that the same are true and correct of his own belief except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes to be true.

DATED this ____ day of March, 2001.

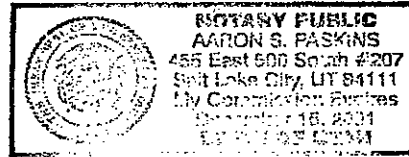
Fred W. Mauney
FRED W. MAUNEY
Plaintiff, In Propria Personam

STATE OF UTAH
COUNTY OF SALT LAKE

Fred W. Mauney appeared before me on the 16th day of March, 2001 with satisfactory evidence to prove to me his identity. Fred W. Mauney then signed this document in my presence and affirmed that he had read this document and understood its contents were true to his personal knowledge.

DATED this 16 day of March, 2001.

Aaron S. Paskins
Notary Public



CERTIFICATE OF MAILING/DELIVERY

I hereby certify that a true and correct copy of the foregoing Complaint was mailed, postage prepaid on this 16th day of March, 2001 to: 475 L'Enfant Plaza SW., Washington, DC 20260-0010.

Fred W. Mauney
Fred W. Mauney, Plaintiff

MAR 28 2001

MARKUS B. ZIMMER, CLERK

BY _____
DEPUTY CLERK

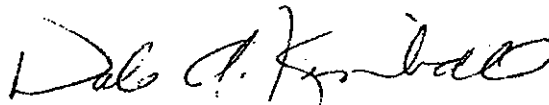
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>MAUNEY, Plaintiff, vs. US POSTAL SERVICE et al., Defendants.</p>	<p>ORDER OF REFERENCE Civil No. 2:01CV179K</p>
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IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to the magistrate judge. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 28th day of March, 2001.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

4

jmo

United States District Court
for the
District of Utah
March 29, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

APPENDIX A

FILED
CLERK, U.S. DISTRICT COURT

28 MAR 01 PM 2:37

Name: FRED W. MAWNEY
Address: 500 W. 100 W. BROADWAY, S.W.
Telephone:

DISTRICT OF UTAH

BY: [Signature]

DEPUTY CLERK

2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH Central DIVISION

Plaintiff,

FRED W. MAWNEY

v.

U.S. POSTAL SERVICE, et al

Defendant(s).

MOTION FOR
OFFICIAL SERVICE
OF PROCESS

Civil No:

2:01-cv-179 K

The plaintiff in the above entitled matter hereby moves the court for an order directing the United States Marshal's Service to serve process pursuant to 28 U.S.C. § 1915 (c).

The court has already approved my application to file the matter *in forma pauperis*. The full names and addresses of the defendants are contained in the complaint.

Dated this 28th day of March, 2001.

[Signature]
FRED W. MAWNEY
(Print your name below your signature.)

5

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
CLERK, U.S. DISTRICT COURT
17 MAY 01 AM 11:32
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)
)
)
 Plaintiff,)
)
 v.) **Civil No. 2:01CV-179K**
)
 UNITED STATES POSTAL SERVICE,)
 et al.,)
)
 Defendant.) **DEFENDANT'S MOTION TO QUASH**

The defendant, by counsel, pursuant to Rule 4, Federal Rules of Civil Procedure, hereby moves the Court for an order quashing the plaintiff's attempt to effect service of process upon the defendant on the ground that the plaintiff has failed to complete service of process in compliance with the requirements of Rule 4. The grounds for this motion are more fully set forth in the Memorandum in Support of Motion to Quash and the Declaration of Kirk C. Lusty filed herewith.

Paul M. Warner
United States Attorney


Kirk C. Lusty
Special Assistant United States Attorney

ORIGINAL

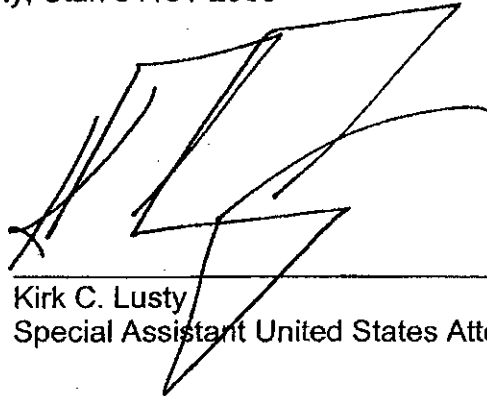
SCANNED

7

CERTIFICATE OF SERVICE

It is hereby certified that on May 15, 2001 a copy of the foregoing
MOTION TO QUASH was sent by first class mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



A handwritten signature in black ink, appearing to read 'Kirk C. Lusty', is written over a horizontal line. The signature is stylized and somewhat abstract, with several overlapping strokes.

Kirk C. Lusty
Special Assistant United States Attorney

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
CLERK, U.S. DISTRICT COURT

17 MAY 01 AM 11:32

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 2:01CV-179K
)	
UNITED STATES POSTAL SERVICE,)	
et al.,)	
)	
Defendant.	)	<u>DEFENDANT'S MOTION TO QUASH</u>

The defendant, by counsel, pursuant to Rule 4, Federal Rules of Civil Procedure, hereby moves the Court for an order quashing the plaintiff's attempt to effect service of process upon the defendant on the ground that the plaintiff has failed to complete service of process in compliance with the requirements of Rule 4. The grounds for this motion are more fully set forth in the Memorandum in Support of Motion to Quash and the Declaration of Kirk C. Lusty filed herewith.

Paul M. Warner
United States Attorney


Kirk C. Lusty
Special Assistant United States Attorney

ORIGINAL

SCANNED

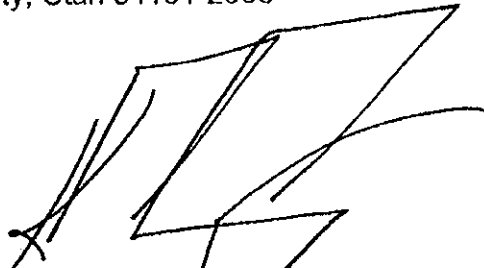
7

CERTIFICATE OF SERVICE

It is hereby certified that on May 15, 2001 a copy of the foregoing

MOTION TO QUASH was sent by first class mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
CLERK OF DISTRICT COURT
17 MAY 01 AM 11:32
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 2:01CV-179K
)	
UNITED STATES POSTAL SERVICE,)	
et al.,)	
	)	DEFENDANT'S MEMORANDUM IN
Defendant.	)	<u>SUPPORT OF MOTION TO QUASH</u>

The defendant, by counsel, hereby submits the following memorandum in support of its Motion to Quash.

STATEMENT OF FACTS

The plaintiff brought the above-entitled action seeking to sue the United States Postal Service for failing to pay a reward.

1. The plaintiff's complaint contains a "Certificate of Mailing/Delivery" that states that a copy of the complaint was "mailed, postage prepaid" to "475 L'Enfant Plaza SW., Washington, D.C. 20260-0010."
2. The plaintiff did not serve a copy of a summons on the United States Postal Service.

ORIGINAL

SCANNED

8

3. The plaintiff has not served a copy of the summons and complaint upon either the United States Attorney for the District of Utah or the Attorney General of the United States. See Declaration of Kirk C. Lusty.

ISSUE

Has the plaintiff effected service of process where he has not served a copy of the summons and complaint upon either the United States Attorney for the District of Utah or the Attorney General of the United States?

ARGUMENT

The Plaintiff has Not Properly Effected Service of Process

As set forth herein, the plaintiff has failed to properly serve the defendant. Service of process is governed by Rule 4, Federal Rules of Civil Procedure. Rule 4(i), Federal Rules of Civil Procedure, requires that service of process be made upon the United States, its Agencies and Officers by delivering a copy of the summons and complaint to the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint by certified or registered mail to the Attorney General of the United States at Washington, D. C. In addition, Rule 4(i)(2), also requires that:

Service upon an officer, agency, or corporation of the United States, shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision **and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency or corporation.** (Emphasis added)

In the present case, the plaintiff has neither served a copy of the summons and complaint upon the United States Attorney nor the Attorney General of the United States. Furthermore, the plaintiff did not serve a copy of the summons and

complaint upon the United States Postal Service. Consequently, the plaintiff has failed to effect service of process upon the defendant in the manner prescribed by Rule 4.

In Messenger v. United States, 231 F. 2d 328, 331 (2d Cir. 1956), the Second Circuit Court of Appeals, in discussing the effect of proper service under the Federal Rules of Civil Procedure, stated:

The rules do prescribe and permit a prescribed procedure which, if followed by plaintiff will give the Court the power to adjudicate the claim asserted by the plaintiff against the defendant. If the prescribed procedure is followed, jurisdiction over the person may follow; **otherwise the court has no power to act.** [Emphasis added].

The plaintiff has not complied with the requirements of Rule 4(i), Federal Rules of Civil Procedure. Thus, plaintiff's attempted service of process was ineffective and this Court does not have personal jurisdiction over the defendants. However, the 120 days for effecting service pursuant to Rule 4(m), Federal Rules of Civil Procedure has not expired; the plaintiff may still effect service of process in conformity with Rule 4(i), Federal Rules of Civil Procedure. Thus, the Court should grant the defendants' Motion to Quash Service of Process and quash the plaintiff's attempted service of process. The plaintiff may then, if he chooses, properly effect service upon the defendants.

CONCLUSION

Here, the plaintiff has neither served the United States Attorney for the District of Utah nor the Attorney General of the United States with a copy of his summons and complaint. All the plaintiff apparently did to effect service of process was to mail by first class mail, not certified or registered mail, a copy of

the complaint to Washington, D.C. That action is not sufficient to effect service of process pursuant to Rule 4, Federal Rules of Civil Procedure. Therefore, the Court does not have personal jurisdiction over the defendant. Therefore, the Court should quash the plaintiff's attempted service of process.

Respectfully submitted,

Paul M. Warner
United States Attorney

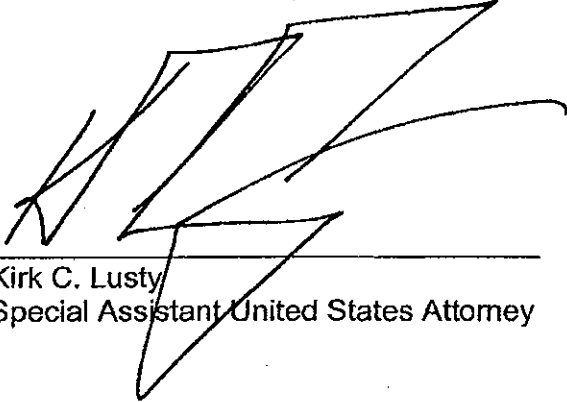


Kirk C. Lusty
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

It is hereby certified that on May 15, 2001 a copy of the foregoing
MEMORANDUM IN SUPPORT OF MOTION TO QUASH was sent by first class
mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

FILED
CLERK, U.S. DISTRICT COURT

-5 JUN 01 PM 4:43

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

FRED W. MAUNEY JR.,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNITED STATES POSTAL)
 SERVICE, POST MASTER GENERAL,)
 POSTAL INSPECTOR, LOCAL)
 BRANCH MAIN OFFICE INSPECTOR,)
 et al.,)
)
 Defendants.)

Case No. 2:01-CV-179 K

ORDER

It having been determined that the plaintiff may proceed in forma pauperis,

IT IS ORDERED that the United States Marshal serve a copy of the Complaint and

Summons upon the following defendants:

Bill Susha, Postal Inspector
1760 West 2100 South
Salt Lake City, Utah 84199

F. J. Marion
Acting Deputy Chief Inspector
475 L'Enfant Plaza S.W.
Washington, D.C. 20260-2160

U.S. Postal Service
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

Kenneth C. Weaver
Chief Postal Inspector
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

William J. Henderson
Post Master General
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

All costs of service shall be advanced by the United States.

10

IT IS FURTHER ORDERED that plaintiff shall serve upon defendants or, if appearance has been entered by counsel, upon their attorney, a copy of every further pleading or other document submitted for consideration by the court. He shall include with the original paper to be filed with the clerk of the court a certificate stating the date a true and correct copy of any document was mailed to the defendants or their counsel. Any paper received by a district judge or magistrate judge which fails to include a certificate of service will be disregarded by the court.

DATED this 1st day of June, 2001.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

jmo

United States District Court
for the
District of Utah
June 7, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
JFAX 9,9848401

FILED
CLERK, U.S. DISTRICT COURT

-5 JUN 01 PM 4:43

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

FRED W. MAUNEY JR.,)

Plaintiff,)

vs.)

THE UNITED STATES POSTAL)

SERVICE, POST MASTER GENERAL,)

POSTAL INSPECTOR, LOCAL)

BRANCH MAIN OFFICE INSPECTOR,)

et al.,)

Defendants.)

Case No. 2:01-CV-179 K

ORDER

It having been determined that the plaintiff may proceed in forma pauperis,

IT IS ORDERED that the United States Marshal serve a copy of the Complaint and

Summons upon the following defendants:

Bill Susha, Postal Inspector
1760 West 2100 South
Salt Lake City, Utah 84199

F. J. Marion
Acting Deputy Chief Inspector
475 L'Enfant Plaza S.W.
Washington, D.C. 20260-2160

U.S. Postal Service
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

Kenneth C. Weaver
Chief Postal Inspector
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

William J. Henderson
Post Master General
475 L'Enfant Plaza S.W.
Washington, D. C. 20260-2160

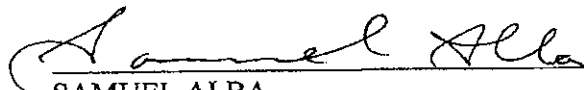
All costs of service shall be advanced by the United States.

10

IT IS FURTHER ORDERED that plaintiff shall serve upon defendants or, if appearance has been entered by counsel, upon their attorney, a copy of every further pleading or other document submitted for consideration by the court. He shall include with the original paper to be filed with the clerk of the court a certificate stating the date a true and correct copy of any document was mailed to the defendants or their counsel. Any paper received by a district judge or magistrate judge which fails to include a certificate of service will be disregarded by the court.

DATED this 1st day of June, 2001.

BY THE COURT:


SAMUEL ALBA
United States Magistrate Judge

jmo

United States District Court
for the
District of Utah
June 7, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
JFAX 9,9848401

FILED
CLERK, U.S. DISTRICT COURT

-5 JUN 01 PM 4:43

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

FRED W. MAUNEY JR.)
IN PROPRIA PERSONAM,)

Plaintiff,)

vs.)

THE UNITED STATES POSTAL)
SERVICE, POST MASTER GENERAL,)
POSTAL INSPECTOR, LOCAL)
BRANCH MAIN OFFICE INSPECTOR,)
et al.,)

Defendants.)

Case No. 2:01-CV-179 K

ORDER

IT IS HEREBY ORDERED as follows:

1. All correspondence with the court and all pleadings submitted to the court by any party to this action must contain a certificate or other proof that copies thereof have been mailed to or otherwise served upon all parties to the action or upon counsel of record.

2. Except only for applications or motions that may under the Federal Rules of Civil Procedure be submitted *ex parte*, correspondence or pleadings not containing such proof of service will be lodged with the court but will not be filed and will not be considered by the court for any purpose.

3. When pleadings or correspondence mailed to the court contain enclosures or exhibits, copies of the enclosures or exhibits must be furnished to the opposing parties or counsel. However, when enclosures or exhibits are medical records or similar documents consisting of more than 10

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pages, they need not be furnished to the opposing parties or counsel. They will be summarized by the court for the parties. Also, confidential records or reports need not be furnished to opposing parties if the basis of the confidentiality is explained to the court.

4. When factual information is submitted to the court by any party, the opposing party or parties must advise the court within 20 days after service if there is any disagreement concerning the factual information and, if so, the basis of the disagreement and in detail what it is claimed are the correct facts. Factual information not so disputed will be accepted by the court as correct in its initial appraisal of the merits of the action.

DATED this 1st day of June, 2001.

BY THE COURT:


SAMUEL ALBA
United States Magistrate Judge

jmo

United States District Court
for the
District of Utah
June 7, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
JFAX 9,9848401

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
CLERK, U.S. DISTRICT COURT
30 AUG 01 PM 1:09
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)
)
)
 Plaintiff,)
)
 v.) **Civil No. 2:01CV-179K**
) (Magistrate Judge Alba)
 UNITED STATES POSTAL SERVICE,)
 et al.,)
)
 Defendants.) **MOTION TO DISMISS**

The defendants, by counsel, pursuant to Rule 4, Federal Rules of Civil Procedure, hereby moves the Court for an order dismissing the plaintiff's complaint for lack of personal jurisdiction over the defendants on the ground that the plaintiff has failed to complete service of process in compliance with the requirements of Rule 4. Specifically, the plaintiff has failed to serve a copy of his summons and complaint upon either the United States Attorney for the District of Utah or upon the Attorney General of the United States. The grounds for this motion are more fully set forth in the Memorandum in Support of Motion to Dismiss and the Declaration of Kirk C. Lusty filed herewith. More than 120 days

14

have elapsed since the plaintiff filed his complaint.

Paul M. Warner
United States Attorney



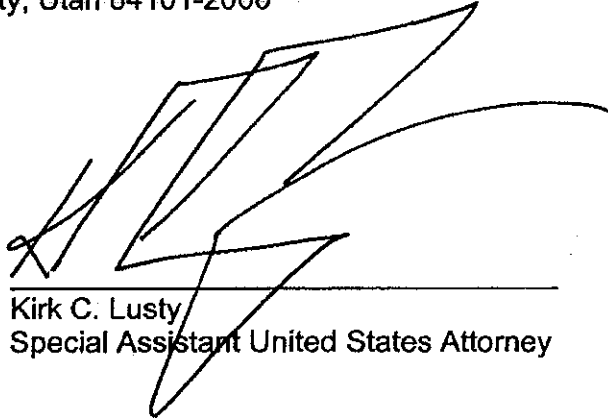
Kirk C. Lusty
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

It is hereby certified that on August 30, 2001 a copy of the **DEFENDANTS'**

MOTION TO DISMISS was sent by first class mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
CLERK, U.S. DISTRICT COURT
30 AUG 01 PM 1:09
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)	
)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 2:01CV-179K
	)	(Magistrate Judge Alba)
UNITED STATES POSTAL SERVICE,)	
et al.,)	
	)	DEFENDANT'S MEMORANDUM IN
Defendants.	)	<u>SUPPORT OF MOTION TO DISMISS</u>

The defendants, by counsel, hereby submit the following memorandum in support of their Motion to Dismiss.

STATEMENT OF FACTS

The plaintiff brought the above-entitled action seeking to sue the United States Postal Service for failing to pay a reward.

1. The plaintiff's complaint contains a "Certificate of Mailing/Delivery" that states that a copy of the complaint was "mailed, postage prepaid" to "475 L'Enfant Plaza SW., Washington, D.C. 20260-0010." The complaint was filed on March 20, 2001.

2. On May 15, 2001, the defendants moved to quash the plaintiff's attempted service of process on the ground that the plaintiff had failed to effect

15

service of process upon either the United States Attorney for the District of Utah or the Attorney General of the United States.

3. On June 1, 2001 United States Magistrate Judge Alba entered an order directing the United States Marshall to serve copies of the plaintiff's summons and complaint upon the United States Postal Service, the Postmaster General and various Postal Inspectors.

4. The plaintiff has still not served a copy of the summons and complaint upon either the United States Attorney for the District of Utah or the Attorney General of the United States. See Second Declaration of Kirk C. Lusty.

ISSUE

Has the plaintiff effected service of process where he has not served a copy of the summons and complaint upon either the United States Attorney for the District of Utah or the Attorney General of the United States?

ARGUMENT

The Plaintiff has Not Properly Effected Service of Process

As set forth herein, the plaintiff has failed to properly serve the defendants. Service of process is governed by Rule 4, Federal Rules of Civil Procedure. Rule 4(i), Federal Rules of Civil Procedure, requires that service of process be made upon the United States, its Agencies and Officers by delivering a copy of the summons and complaint to the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint by certified or registered mail to the Attorney General of the United States at Washington, D. C. In addition, Rule 4(i)(2), also requires that:

Service upon an officer, agency, or corporation of the United States, shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision **and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency or corporation.** (Emphasis added)

In the present case, the plaintiff has neither served a copy of the summons and complaint upon the United States Attorney nor the Attorney General of the United States. Furthermore, the plaintiff did not serve a copy of the summons and complaint upon the United States Postal Service. Consequently, the plaintiff has failed to effect service of process upon the defendants in the manner prescribed by Rule 4.

In **Messenger v. United States**, 231 F. 2d 328, 331 (2d Cir. 1956), the Second Circuit Court of Appeals, in discussing the effect of proper service under the Federal Rules of Civil Procedure, stated:

The rules do prescribe and permit a prescribed procedure which, if followed by plaintiff will give the Court the power to adjudicate the claim asserted by the plaintiff against the defendant. If the prescribed procedure is followed, jurisdiction over the person may follow; **otherwise the court has no power to act.** [Emphasis added].

The plaintiff has not complied with the requirements of Rule 4(i), Federal Rules of Civil Procedure. Thus, plaintiff's attempted service of process was ineffective and this Court does not have personal jurisdiction over the defendants. The 120-day period for effecting service pursuant to Rule 4(m), Federal Rules of Civil Procedure, has now expired. Thus, the Court should grant the defendants' Motion to Dismiss and dismiss the plaintiff's complaint.

CONCLUSION

Here, the plaintiff has served neither the United States Attorney for the District of Utah nor the Attorney General of the United States with a copy of his summons and complaint. All the plaintiff apparently did to effect service of process was to mail by first class mail, not certified or registered mail, a copy of the complaint to Washington, D.C. In addition, the United States Marshall served copies of the summons and complaint upon the Postmaster General, United Postal Service and various Postal Inspectors. Those actions are not sufficient to effect service of process pursuant to Rule 4, Federal Rules of Civil Procedure. Therefore, the Court does not have personal jurisdiction over the defendants. More than 120 days have passed since the plaintiff filed his complaint. Therefore, the Court should dismiss the plaintiff's complaint.

Respectfully submitted,

Paul M. Warner
United States Attorney


Kirk C. Lusty
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

It is hereby certified that on August 30, 2001 a copy of the foregoing
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS was sent by first class
mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

FRED W. MAUNEY
Suite 100
50 West Broadway
Salt Lake City, UT 84101-2006

FILED
COURT
29 OCT 01 PM 2:44
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)	
)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 2:01-CV-179K
	)	(Magistrate Judge Alba)
UNITED STATES POSTAL SERVICE,)	
et al.,)	
)	
Defendants.	)	<u>PLAINTIFF'S EX PARTE</u>
	)	<u>APPLICATION FOR ORDER</u>
	)	<u>ENLARGING TIME F.R.C.P.</u>
	)	<u>RULE 6(b)1</u>

Plaintiff Fred Mauney moves ex parte that the time within which to answer or otherwise plead to defendants' Motion to Quash in the above entitled case be enlarged from September 30, 2001 to November 30, 2001; and in support of this motion shows he is involved in more or less unique circumstances, stated and shown as follows.

Plaintiff is presently on a bicycle ride across America for Phoenix Charities, entitled "Ride for America: Let's Take Our Country Back"

(<http://on.to/rideforamerica.com>)

EXHIBIT: 1P, Press Release

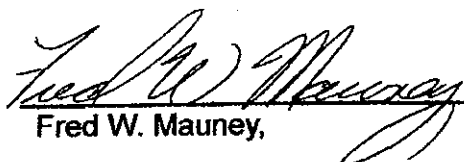
EXHIBITS: 2P and 3P, Newspaper Stories

EXHIBIT: 4P, Accident Report of Plaintiff Being Hit by Car

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Also, the events of September 11, 2001, and all that has changed since that date, have dramatically altered the conditions for which the plaintiff prepared when he began his bicycle ride across the country. Such conditions have significantly complicated the matter of responding in a timely manner to defendants' motion to quash.

October 24, 2001


Fred W. Mauney,

Plaintiff, pro se

Suite 100
50 West Broadway
Salt Lake City, UT 84101-2006

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
31 OCT 01 PM 2:05

FRED W. MAUNEY JR.,
Plaintiff,

v.

UNITED STATES POSTAL SERVICE
et al.,
Defendants.

DISTRICT OF UTAH
BY: SM
Case No. 01-2K01-CV-179 K

O R D E R

Fred W. Mauney Jr. has requested an extension of time in which to file his response opposing Defendants' motion to quash. (See File Entry # 17.) Good cause appearing, **IT IS HEREBY ORDERED** that Mauney be given until November 30, 2001 to file his response.

DATED this 31st day of October, 2001.

BY THE COURT:

Samuel Alba
SAMUEL ALBA
United States Magistrate Judge

198

alt

United States District Court
for the
District of Utah
November 1, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S. 150 E #800
SANDY, UT 84070-2702
JFAX 9,9848401

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
COURT
-1 NOV 01 PM 12:42
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)
)
)
 Plaintiff,)
)
 v.) Civil No. 2:01CV-179K
) (Magistrate Judge Alba)
 UNITED STATES POSTAL SERVICE,)
 et al.,)
)
 Defendants.)

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR ORDER ENLARGING TIME**

The defendants, by counsel, hereby submit the following memorandum in opposition to the plaintiff's Application for Order Enlarging Time.

STATEMENT OF FACTS

The plaintiff brought the above-entitled action seeking to sue the United States Postal Service for failing to pay a reward.

1. The plaintiff's complaint contains a "Certificate of Mailing/Delivery" that states that a copy of the complaint was "mailed, postage prepaid" to "475 L'Enfant Plaza SW., Washington, D.C. 20260-0010." The complaint was filed on March 20, 2001.

2. On May 15, 2001, the defendants moved to quash the plaintiff's attempted service of process on the ground that the plaintiff had failed to effect service of process upon either the United States Attorney for the District of Utah or the Attorney General of the United States.

3. On June 1, 2001 United States Magistrate Judge Alba entered an order directing the United States Marshall to serve copies of the plaintiff's summons and complaint upon the United States Postal Service, the Postmaster General and various Postal Inspectors.

4. On August 30, 2001, the defendant moved to dismiss the plaintiff's complaint on the ground that more than 120 days had expired since the Plaintiff's complaint had been filed and the plaintiff had still not properly served a copy of his summons and complaint upon the United States Attorney for the District of Utah or upon the Attorney General of the United States.

5. The plaintiff has still not served a copy of the summons and complaint upon either the United States Attorney for the District of Utah or the Attorney General of the United States.

6. Mr. Mauney's response to the defendant's Motion to Dismiss was due September 17, 2001. Mr. Mauney now, six weeks late, seeks a month long extension to file his response. As set forth herein, the Court should deny Mr. Mauney's motion and grant the defendant's Motion to Dismiss.

ISSUE

Should the defendant be granted additional time to respond to the defendant's Motion to Dismiss?

ARGUMENT

The Plaintiff Should not be Granted Additional Time

This action was filed March 16, 2001. In more than seven and one-half months the defendant has failed to take the basic step of effecting service of process upon either the Attorney General of the United States or the United States Attorney for the District of Utah. Defendant alerted the plaintiff that any attempted service was deficient in June when it sought to quash service. The plaintiff could have simply effected service of process at that point and this case would have proceeded. However, he chose not to do so. Now, six weeks after Mr. Mauney's response was due, he moves the Court for an additional month to respond. Mr. Mauney does not state why he did not respond in a timely manner. Mr. Mauney seeks an extension because he is riding a bicycle across America in support of the "legalization of industrial hemp for farmers." Mr. Mauney does not show why he could not have timely responded to the defendant's motion. Mr. Mauney has never contacted counsel for the defendants seeking an extension of time. Neither the Court nor the defendant should be expected to resolve this matter on a schedule that Mr. Mauney unilaterally and belatedly seeks to impose upon them. Thus, the Court should deny Mr. Mauney an extension of time.

As set forth herein, the plaintiff has failed to properly serve the defendants. Service of process is governed by Rule 4, Federal Rules of Civil Procedure. Rule 4(i), Federal Rules of Civil Procedure, requires that service of process be made upon the United States, its Agencies and Officers by delivering a copy of the summons and complaint to the United States attorney for the district in which the

action is brought and by mailing a copy of the summons and complaint by certified or registered mail to the Attorney General of the United States at Washington, D. C. In addition, Rule 4(i)(2), also requires that:

Service upon an officer, agency, or corporation of the United States, shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision **and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency or corporation.** (Emphasis added)

In the present case, the plaintiff has neither served a copy of the summons and complaint upon the United States Attorney nor the Attorney General of the United States. Furthermore, the plaintiff did not serve a copy of the summons and complaint upon the United States Postal Service. Consequently, the plaintiff has failed to effect service of process upon the defendants in the manner prescribed by Rule 4.

In **Messenger v. United States**, 231 F. 2d 328, 331 (2d Cir. 1956), the Second Circuit Court of Appeals, in discussing the effect of proper service under the Federal Rules of Civil Procedure, stated:

The rules do prescribe and permit a prescribed procedure which, if followed by plaintiff will give the Court the power to adjudicate the claim asserted by the plaintiff against the defendant. If the prescribed procedure is followed, jurisdiction over the person may follow; **otherwise the court has no power to act.** [Emphasis added].

The plaintiff has not complied with the requirements of Rule 4(i), Federal Rules of Civil Procedure. Thus, plaintiff's attempted service of process was ineffective and this Court does not have personal jurisdiction over the defendants. The 120-day period for effecting service pursuant to Rule 4(m),

Federal Rules of Civil Procedure, has now expired. Thus, the Court should grant the defendants' Motion to Dismiss and dismiss the plaintiff's complaint.

CONCLUSION

As set forth above, the Court should not grant the plaintiff's late filed motion. There is no reason why Mr. Mauney could not have responded timely to the defendant's Motion to Dismiss. Furthermore, the plaintiff has served neither the United States Attorney for the District of Utah nor the Attorney General of the United States with a copy of his summons and complaint. All the plaintiff apparently did to effect service of process was to mail by first class mail, not certified or registered mail, a copy of the complaint to Washington, D.C. In addition, the United States Marshall served copies of the summons and complaint upon the Postmaster General, United Postal Service and various Postal Inspectors. Those actions are not sufficient to effect service of process pursuant to Rule 4, Federal Rules of Civil Procedure. Therefore, the Court does not have personal jurisdiction over the defendants. More than 120 days have passed since the plaintiff filed his complaint. Therefore, the Court should dismiss the plaintiff's complaint.

Respectfully submitted,

Paul M. Warner
United States Attorney



Kirk C. Lusty
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

It is hereby certified that on October 31, 2001 a copy of the foregoing
**MEMORANDUM IN OPPOSITION TO DEFENDANT'S APPLICATION FOR
EXTENSION OF TIME** was sent by first class mail to the following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

PAUL M. WARNER (3389)
United States Attorney
KIRK C. LUSTY (3826)
Special Assistant United States Attorney
9350 South 150 East, Suite 800
Salt Lake City, Utah 84070-2702
Telephone: (801) 984-8401

FILED
COURT
-6 DEC 01 PM 12:56
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FRED W. MAUNEY, Jr.)

Plaintiff,)

v.)

UNITED STATES POSTAL SERVICE,)
et al.,)

Defendants.)

Civil No. 2:01CV-179K
(Magistrate Judge Alba)

REQUEST FOR RULING

The defendants, by counsel, request the Court to rule on the Defendants' Second Motion to Dismiss. The Court granted Mr. Mauney an extension to November 30, 2001 to respond to the defendants' Second Motion to Dismiss. That time has now passed and Mr. Mauney has not responded to the defendants' motion. The Court should grant the defendants' motion.

Paul M. Warner
United States Attorney

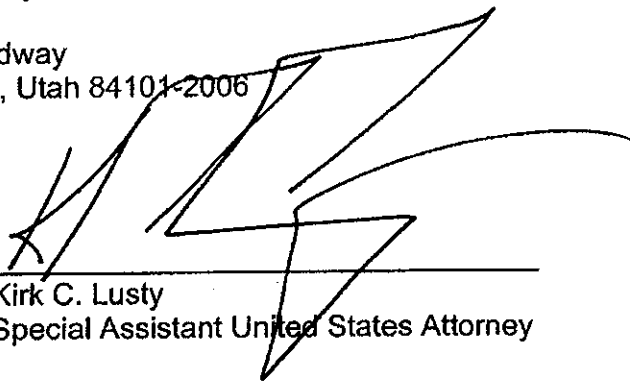
Kirk C. Lusty
Special Assistant United States Attorney

20

CERTIFICATE OF SERVICE

It is hereby certified that on December 5, 2001 a copy of the
DEFENDANTS' MOTION TO DISMISS was sent by first class mail to the
following:

Fred W. Mauney
Suite 100
50 West Broadway
Salt Lake City, Utah 84101-2006



Kirk C. Lusty
Special Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FRED W. MAUNEY, JR.,

Plaintiff,

vs.

UNITED STATES POSTAL SERVICE,
et al.,

Defendants.

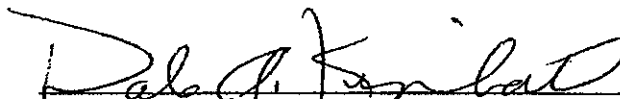
ORDER

Case No. 2:01CV179K

On August 30, 2001, Defendants filed a motion to dismiss. On October 31, 2001, Magistrate Judge Alba issued an order giving Plaintiff until November 30, 2001, to respond to Defendants' motion. As of the date of this order, Plaintiff has not opposed Defendants' motion to dismiss. Being fully informed and for good cause appearing, IT IS HEREBY ORDERED that Defendants' motion to dismiss is GRANTED and this case is dismissed with prejudice, each party to bear its own costs.

DATED this 10th day of January, 2002.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

21

alt

United States District Court
for the
District of Utah
January 11, 2002

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00179

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Fred W. Mauney Jr
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84102-2006

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US POSTAL SERVICE
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SANDY, UT 84070-2702
JFAX 9,9848401