

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ELSIE L. MORLEY, et al.,)
)
 Plaintiffs)
)
v.) Civil No. 98-0119-B
)
DEPARTMENT OF HUMAN)
SERVICES, et al.,)
)
 Defendants)

RECOMMENDED DECISION

On September 24, 1998, the parties in this matter were directed to show cause why no responsive pleading or motion for entry of default had been filed regarding Defendant Department of Human Services, upon which the Court’s record indicated service of process had been accomplished on June 9, 1998.¹ Plaintiffs have not responded to the Order to Show Cause; therefore, pursuant to the terms of the Order to Show Cause, the matter may be dismissed as to this Defendant.

Defendant has responded to the Order to Show Cause, and has in addition filed a Motion to Dismiss. In both filings, Defendant asserts that service was not properly

¹ Defendant Fred Putnam was dismissed on his Motion to Dismiss by Order dated August 12, 1998. Defendants Pam Glidden, David Socoby, and Tami L. Growe were dismissed for Plaintiffs’ failure to effectuate service of process on them by Order dated September 24, 1998. The Maine Department of Human Services is the sole remaining Defendant.

accomplished upon the Department of Human Services. Defendant's counsel indicates in particular that the summons and complaint delivered in hand to the Department's offices in Houlton, Maine, was interpreted as having been served upon Fred Putnam individually, rather than on behalf of the Department.² Defendant further correctly notes that service of process upon an agency of the State of Maine is accomplished by service either upon the chief executive officer of the agency, or by upon an officer, director or manager of the Department, Fed. R. Civ. P. 4(j)(2), Me. R. Civ. P. 4(d)(12), and indicates that Fred Putnam is not one of the persons upon whom service would be proper. Plaintiffs have not responded to Defendant's argument regarding service of process in their objection to Defendant's Motion to Dismiss. The time for objection having expired on October 22, 1998, the Motion to Dismiss for improper service of process may be granted pursuant to Local Rule 7(b) ("[u]nless within ten(10) days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.").

² Defendant Putnam indeed responded to the Complaint very quickly, filing a Motion to Dismiss within two weeks of the service. The Court notes, however, that the summons itself makes no reference to Defendant Putnam either in the body of the summons or in the return.

Conclusion

Accordingly, I hereby recommend this matter be DISMISSED as to Defendant Department of Human Services for lack of service of process.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on October 27, 1998.