

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

GEORGE MILAM HALL,

Plaintiff,

v.

Case No. 07-4128-SAC

DOUGLAS P. WITTEMAN, *et al.*,

Defendants.

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**ORDER**

This matter comes before the court upon defendants Coffey County and Coffey County Commissioners' Motion to Quash Service or, in the alternative, Motion for Additional Time to Answer or Otherwise Respond (Doc. 18). Specifically, defendants ask the court for an order quashing service of summons and complaint upon said defendants or extending the time within which to answer or otherwise respond to plaintiff's complaint. No response to the instant motion has been filed and the time for doing so has passed. Therefore, the court is prepared to rule.

D. Kan. Rule 7.4 provides in relevant part: "The failure to file a brief or response within the time specified within Rule 6.1[(d)]<sup>1</sup> shall constitute a waiver of the right thereafter to file such a brief or response . . . . If a respondent fails to file a response within the time required . . . ,

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<sup>1</sup> Rule 6.1(d)(1) provides that "[r]esponses to nondispositive motions . . . shall be filed and served within 14 days."

the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.” Because no response has been filed in opposition to defendant’s motion, the court finds that it should be treated as uncontested.

The undersigned entered an order on November 30, 2007 granting plaintiff’s Application for Leave to File Action Without Payment of Fees, Costs, or Security (Doc. 2). That order, in accordance with plaintiff’s request, directed that the “Clerk shall proceed with service of process, except to those defendants plaintiff has directed not to be served until 120 days have passed since the filing of the Complaint.”<sup>2</sup> Among those defendants who were not to be served until 120 days had passed were defendants Coffey County and the Coffee County Commissioners.<sup>3</sup>

Due to an internal error, service was made on defendants Coffey County and the Coffey County Commissioners on December 31, 2007, prior to the expiration of the 120 day period directed in the order of November 30, 2007. If the service of the complaint had been properly made in accordance with the order, service would have been made on the defendants on Monday, March 3, 2008. Accordingly, defendants’ response would have been due on Monday, March 24, 2008.

Defendants now request that this court either quash service, or extend the time period for them to file an answer or otherwise respond to plaintiff’s complaint. As noted above, plaintiff does not contest this motion, and the undersigned sees no reason why an extension of time for defendants to file an answer or otherwise respond would prejudice plaintiff. Indeed, granting

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<sup>2</sup>Doc. 4, at 2.

<sup>3</sup>*Id.*

defendants' motion would merely restore the schedule to that originally ordered on November 30, 2007.

Accordingly, and without objection,

**IT IS THEREFORE ORDERED** that defendant Coffey County and Coffey County Commissioners' Motion to Quash Service or, in the alternative, Motion for Additional Time to Answer or Otherwise Respond (Doc. 18) is hereby granted in part. Coffey County and Coffey County Commissioners shall have up to and including March 24, 2008 to answer or otherwise respond to plaintiff's complaint.

**IT IS SO ORDERED.**

Dated this 21st day of February, 2008, at Topeka, Kansas.

s/ K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge