

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

MAR 22 2004

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

LEONARD PELTIER,

Plaintiff,

v.

LOUIS FREEH, *et al.*,

Defendants.

Civil Case Number 02-0635 (RJL)

  
MEMORANDUM OPINION & ORDER

(March 22 2004)

The plaintiff, who is currently serving two consecutive life sentences for the 1975 killing of two FBI agents, has filed suit against Robert Mueller, Director of the Federal Bureau of Investigation ("FBI"), Louis Freeh, former Director of the FBI, twelve special agents, and the FBI Agents Association ("FBIAA"), seeking to injunctive relief and monetary damages from the defendants for alleged violation of his rights under the Constitution as they relate to obtaining parole and clemency. Compl. ¶1. Specifically, plaintiff alleges that the defendants "have engaged in a systematic, and officially sanctioned campaign of mis-information and dis-information designed to present the named Plaintiff from receiving a fair hearing on his claims for both Clemency before the President of the United States, and Parole before the United States Parole Commission." *Id.* Defendants' Mueller, Freeh, Kowalaski, Marquise, Kessler, Domin, Gebhardt, Burris, Alba, Williams and Ginieres filed a Motion to Dismiss for insufficient service of process. Defendants Sennett, McCullough and FBIAA filed a separate Motion to Dismiss for insufficient service of process and failure to state a claim upon which relief can be granted. For

(24)

the following reasons, the Court grants defendants' motions and dismisses this action based on the insufficiency of service of process.<sup>1</sup>

The plaintiff filed this action on April 4, 2002, and fifteen summons were issued for the named defendants on April 19, 2002. There is no evidence in the record or the docket that plaintiff ever served any of the defendants with a summons or a copy of the complaint. After the period of time for service under Rule 4(m) expired, the plaintiff filed a motion for an extension of time to November 1, 2002. In that motion, plaintiff stated that he mailed a request for waiver of service, accompanied by the complaint, to each defendant. None of the waivers were returned, but there is also no evidence that they were successfully received by defendants. *See e.g.* Letter from Randolph Blair of 5/22/02 (Attachment to Pl. Mot. for Extension of Time). Additionally, there is no evidence that the plaintiff attempted to effect service on the United States or the Attorney General as outlined by Rule 4(i)(2)(B). In fact, summons for the United States or the Attorney General were not issued by the Clerk's Office until November 7, 2002, more than four months after the expiration of the time allowed for service and there is no evidence that the plaintiff even attempted service.

The defendants have moved to dismiss the case for insufficiency of service of process, pursuant to Federal Rule 12(b)(5). The plaintiff, in response, argues only that he should be exempt from the requirements of Rule 4 where there has been no waiver and that the time limits for service should not apply because of the difficulty of serving active FBI agents. The Court finds these reasons unpersuasive. Rule 4(e) states the methods by which service may be effected

---

<sup>1</sup> Named defendant Ed Wood did not join in either motion, but there is no evidence in the record that he was properly served, and the case against him is dismissed as well.


"upon an individual from whom a waiver has not been obtained and filed." The plaintiff offers no authority for his apparent position that requesting a waiver under Rule 4(d) is an adequate substitute for actual service of process under Rule 4(e). Furthermore, Rule 4(i)(2)(B) expressly provides that service upon an officer of the United States being sued in his individual capacity for acts in connection with the performance of duties on behalf of the United States is effected by serving the United States through the Attorney General *and* by serving the individual officer. Although the plaintiff claims that it is "extraordinarily difficult" to effect service upon active FBI agents, Pl. Opp. to Def. Mot. to Dismiss at 3 n.1, he does not explain why he has been unable to the United States, the Director of the FBI or the FBIAA. Because the plaintiff has failed to show good cause why he has failed to effect service upon the defendants and because he has refused to comply with the Federal Rules of Civil Procedure, this action is hereby dismissed without prejudice.

Accordingly, it is hereby

**ORDERED** that defendants Motions to Dismiss are **GRANTED**; and it is further

**ORDERED** that the case be **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED.**

  
\_\_\_\_\_  
RICHARD J. LEON  
United States District Judge