

231 F.R.D. 700  
United States District Court,  
M.D. Georgia,  
Valdosta Division.

Willie Floyd WILLIAMS, Jr., and Mickle Jermaine  
Jackson, Plaintiffs,

v.

CLINCH COUNTY, GEORGIA; Winston Peterson,  
Sheriff of Clinch County, in his official and  
individual capacities; and Sissy Suggs, Deputy  
Sheriff of Clinch County, in her official and  
individual capacities, Defendants.

No. 7:04-CV-124. | May 19, 2005.

#### Attorneys and Law Firms

\*701 Amy L. Madigan, Courtland Lewis Reichman, King  
& Spalding, Sarah Elisabeth Geraghty, Southern Center  
for Human Rights, Stephen Brooks Bright, Stephen B.  
Devereaux, Atlanta, GA, for Plaintiffs.

Richard K. Strickland, Brunswick, GA, for Defendants.

#### Opinion

### ORDER

LAWSON, District Judge.

Before this Court is Plaintiffs' motion to amend their  
complaint (Doc. 23) and Plaintiffs' motion to extend  
discovery (Doc. 24). For the reasons set forth below, both  
motions are granted.

#### I. Motion to Amend

In response to Plaintiffs' motion to amend, Defendants  
indicate that they have no objection to the filing of the  
amended complaint. Therefore, under Federal Rule of  
Civil Procedure 15(a), Plaintiffs' motion is granted.  
Exhibit 1, which was attached to Plaintiffs' motion to  
amend, shall become the operative complaint in this case.

Additionally, Defendants want to know their deadline for  
answering the amended complaint. With no citation to  
authority or explanation, Defendants state that "their  
obligation to file a responsive pleading to the Amended  
Complaint will begin on the date of *entry* of an Order ...  
granting Plaintiffs' Motion to Amend." (Defs.' Resp.  
Plfs.' Mot. Am Compl. at 1, Doc. 25) (emphasis added.)

In the specific context of this case, they are correct.

Under Rule 15(a), "a party shall plead in response to an  
amended pleading within the time remaining for response  
to the original pleading or within 10 days after *service* of  
the amended pleading, whichever period may be the  
longer, unless the court otherwise orders." Fed.R.Civ.P.  
15(a) (emphasis added). Since the time remaining for  
response to the original pleading has passed, the 10-day  
period applies. By its terms, the 10-day period is  
triggered by "service" of the amended pleading, not just  
filing it with the Court. But, service and filing with the  
Court do not have to be mutually exclusive. Therefore,  
the Court must determine whether the filing of the  
proposed amended complaint effected service on  
Defendants.

Regarding who must be served, Rule 5(a) states, "every  
pleading subsequent to the original complaint unless the  
court otherwise orders because of numerous defendants ...  
shall be served upon each of the parties." Fed.R.Civ.P.  
5(a). "Service under Rule[ ] 5(a) ... on a party represented  
by an attorney is made on the attorney unless the court  
orders service on the party." Fed.R.Civ.P. 5(b)(1). To that  
extent, it is no surprise that amended pleadings may be  
served on an attorney who represents a party to a lawsuit.  
*Cohn v. Columbia Pictures Corp.*, 9 F.R.D. 204, 205  
(S.D.N.Y.1949).

Regarding how service must be perfected, Rule 5(b)(2)(D)  
states service can be made electronically "through the  
court's transmission facilities." Fed.R.Civ.P. 5(b)(2)(D).  
In a standing order entered on November 29, 2004, the  
Court, speaking through Chief Judge Sands, stated that  
"[s]ervice will be perfected on registered attorneys in  
CM/ECF through the Clerk's Office by electronic means.  
The registered attorney will receive a 'Notice of  
Electronic Filing' which will be the equivalent of service  
by mail under Federal Rule of Civil Procedure 5." (Ord. at  
3.) However, "Service by electronic means is not \*702  
effective if the party making service learns that the  
attempted service did not reach the person to be served."  
(Ord. at 3.)

Here, attached to Plaintiffs' motion to amend their  
complaint is a certificate of service stating that Amy  
Madigan, attorney for Plaintiffs, electronically served the  
motion to amend complaint upon counsel for Defendants.  
Also attached to the motion was the proposed amended  
complaint. Counsel for Defendants appears to be  
registered in the CM/ECF system. Thus, it seems that  
Plaintiffs have properly served Defendants with the  
proposed amended complaint. But, the proposed amended  
complaint had yet to be accepted by the Court when it  
was served; thus, the trigger starting Rule 15(a)'s 10-day  
period is date on which the Court accepts the amended  
complaint as the operative complaint. The trigger date in

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this case is May 19, 2005, the date this Order was entered on the docket.

**II. Motion to Extend Discovery**

Plaintiffs request the Court to extend discovery to June 22, 2005. Plaintiffs represented that Defendants do not object to the extension. Therefore, the extension is granted; discovery shall end on June 22, 2005.

**III. Conclusion**

**A.** Plaintiffs' motion to amend complaint (Doc. 23) is granted. Exhibit 1, which was attached to Plaintiffs' motion, shall become the operative complaint in this case. Defendants shall have no longer than 10 days after the entry of this Order to answer the amended complaint.

**B.** Plaintiffs' motion to extend discovery (Doc. 24) is granted; discovery shall be extended to June 22, 2005.

So ordered.