

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

FRANCIS B. SERIEUX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:20-cv-0056
	)	
SECURITY FRANK,	)	
	)	
Defendant.	)	
	)	

ORDER

BEFORE THE COURT is the report and recommendation of the Magistrate Judge. (ECF No. 3.) The Magistrate Judge recommends that the Court dismiss the complaint filed by Francis B. Serieux against “Mr. Frank” (no last name provided), a security guard with the Court, for failing to allege a basis for federal jurisdiction. Also before the Court is Francis B. Serieux’s motion requesting an extension of time to object to the report and recommendation. For the reasons discussed below, the Court will deny the motion for an extension of time, adopt the report and recommendation, and dismiss the complaint in this matter.

I. FACTUAL AND PROCEDURAL HISTORY.

On July 24, 2020, Francis B. Serieux (“Serieux”), proceeding *pro se*, filed a complaint against a security officer of the Court, “Mr. Frank” (“Frank”) whose last name Serieux does not know. In his complaint, Serieux alleges that Frank told Serieux that the court was “not [ac]cepting any paperwork or [was] not open on 5/4/20.” Complaint at 2, ECF No. 1. Serieux asserts that Frank “tried to violate [his] rights” because he knew that the court was open. *Id.* Serieux seeks “Nine Hundred & Ninety Nine Squillion” dollars. *Id.* at 3.

On August 4, 2020, the Magistrate Judge entered a report and recommendation recommending that the Court dismiss the complaint for failing to allege a basis for federal jurisdiction. ECF No. 3. The next day, August 5, 2020, a copy of the amended report and recommendation was sent to Serieux by certified mail. *See* Hard Copy Notice at 1, ECF No. 5.

Serieux v. Frank
Case No. 3:20-cv-0056
Order
Page 2 of 5

On August 18, 2020, Serieux filed a motion “asking the court to write in cursive not print.” *See* Motion at 1, August 18, 2020, ECF No. 4. In that motion, Serieux requests an additional month to respond to the report and recommendation and “to correct [his] lawsuits.” *Id.* Serieux asserts that an extension of time is warranted because he is waiting on new copies of his complaint from the Clerk’s Office and fourteen days is not enough time to correct 24 cases.¹ *See id.*

II. DISCUSSION

Litigants may make “specific written objections” to a magistrate judge’s report and recommendation “[w]ithin 14 days after being served with a copy of the recommended disposition.” *See* Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1) (“Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.”). When a party is served by mail pursuant to Fed. R. Civ. P. 5(b)(2)(C) (“A paper is served under this rule by . . . mailing it to the person’s last known address—in which event service is complete upon mailing”), the 14-day time period within which a party may object to a magistrate judge’s report and recommendation is extended to 17 days. *See* Fed. R. Civ. P. 6(d) (“When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).”); *see also Pearson v. Prison Health Serv.*, 519 F. App’x 79, 81 (3d Cir. 2013) (explaining that when a party is served with a report and recommendation by mail, the period to file objections is 17 days). The time within which a party may make objections may be extended by the Court upon a timely motion for an extension of time demonstrating good cause for the extension. *See* Fed. R. Civ. P. 6(b)(1) (“When an act may or must be done within a specified time, the court may, for good cause, extend that time . . . if a request is made, before the original time . . . expires.”).

¹ Serieux references Case Number 3:20-cv-0052 and “23 other cases” as the 24 cases which he must “correct.” *See* Motion at 1, August 18, 2020, ECF No. 6. The Court is aware of a total of 18 complaints recently filed by Serieux including every case number from Case Number 3:20-cv-0050 through Case Number 3:20-cv-0069 except for Case Numbers 3:20-cv-0058 and 3:20-cv-0068.

Serieux v. Frank
Case No. 3:20-cv-0056
Order
Page 3 of 5

When a magistrate judge issues a report and recommendation, the Court is required to review *de novo* only those portions of the report and recommendation to which a party has objected. *See* Fed. R. Civ. P. 72(b)(3). When no objection to a magistrate's report and recommendation is made, or such an objection is untimely, the district court reviews the report and recommendation for plain error. *See Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("While . . . [28 U.S.C. § 636(b)(1)] may not require, in the absence of objections, the district court to review the magistrate's report before accepting it, we believe that the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report."); *see also Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) *aff'd*, 276 Fed. App'x 125 (3d Cir. 2008)(explaining that, by failing to object to a portion of a report and recommendation, the litigant "waived its right to have this Court conduct a *de novo* review," and that in those circumstances, "the scope of [the court's] review is far more limited and is conducted under the far more deferential standard of 'plain error'").

Here, *Serieux* was served with a copy of the report and recommendation by mail on August 5, 2020. *See* Hard Copy Notice at 1, ECF No. 5. As such, the deadline for *Serieux* to file objections to the August 4, 2020 report and recommendation was August 24, 2020. *Serieux* has not filed any objections. Nevertheless, on August 18, 2020, *Serieux* did timely request an extension of time to make his objections.

"To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party's diligence." *Ashmore v. Sec'y, DOT*, 503 F. App'x 683, 685 (11th Cir. 2013). "It is not enough for counsel to claim that s/he is too busy to meet the deadline . . . [r]ather, unforeseen or uncontrollable events . . . lie at the heart of the 'good cause' requirement for additional time." *Joseph v. Hess Oil V.I. Corp.*, 651 F.3d 348, 355 (3d Cir. 2011) (interpreting good cause for an extension of time to appeal under 3d Cir. Local Appellate Rule 112.4(a)); *see also Bishop v. Corsentino*, 371 F.3d 1203, 1207 (10th Cir. 2004) (explaining that good cause for an extension of time to appeal under Fed. R. App. P. 4(a)(5) "is usually occasioned by something that is not within the control of the movant").

Significantly, *Serieux* does not present any reasons to warrant an extension of time other than his assertions that he is waiting on new copies of his complaint from the Clerk's

Serieux v. Frank
Case No. 3:20-cv-0056
Order
Page 4 of 5

Office and that fourteen days is not enough time to correct his case. The Court finds that such circumstances do not constitute good cause. As such, the Court will deny Serieux's request for an extension of time to object to the August 4, 2020 report and recommendation. Accordingly, the Court will review the report and recommendation for plain error.

To reject or modify a report and recommendation under plain error review, a district court must find "an 'error' that is 'plain' and that 'affects substantial rights.'" *United States v. Russell*, 134 F.3d 171, 181 (3d Cir. 1998) (quoting *United States v. Retos*, 25 F.3d 1220, 1228 (3d Cir. 1994)). "A 'plain' error is one that is 'clear' or 'obvious.'" *Gov't of Virgin Islands v. Lewis*, 620 F.3d 359, 364, 54 V.I. 882 (3d Cir. 2010) (quoting *United States v. Turcks*, 41 F.3d 893, 897 (3d Cir. 1994)).

Reviewing the record in this case and the August 4, 2020, report and recommendation for plain error, the Court finds no error, let alone plain error. Significantly, "[j]urisdiction in the federal courts is limited . . . and exists in only two circumstances: when a complaint asserts a cause of action under some provision of federal law . . . or when the parties are of diverse citizenship and the amount in controversy exceeds the jurisdictional minimum of \$75,000.00, exclusive of costs and interest . . ." *Abulkhair v. Liberty Mut. Ins. Co.*, 441 F. App'x 927, 930 (3d Cir. 2011) (citations omitted). Moreover, "[t]he basis for federal court jurisdiction must be apparent from the face of the plaintiff's properly pleaded complaint." *Id.* This Court is unable to identify any cognizable claim under federal law from the face of Serieux's complaint. Nor is diverse citizenship apparent. As such, the Court will adopt the August 4, 2020 report and recommendation.

The premises considered, it is hereby

ORDERED that Francis Serieux's motion, ECF No. 4, for an extension of time to file objections to the August 4, 2020 Report and Recommendation of the Magistrate Judge is **DENIED**; it is further

ORDERED that the August 4, 2020 Report and Recommendation, ECF No. 3, is **ADOPTED**; it is further

Serieux v. Frank
Case No. 3:20-cv-0056
Order
Page 5 of 5

ORDERED that Francis Serieux's complaint, ECF No. 1, is **DISMISSED**; and it is further

ORDERED that the Clerk of Court shall **CLOSE** this case.

Dated: August 28, 2020

/s/ Robert A. Molloy
ROBERT A. MOLLOY
District Judge