

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TA MEKA BROWN,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	Case No. 05-2316-KHV
MENLO EXPEDITE,)	
)	
Defendant.)	
_____)	

ORDER

On July 22, 2005, plaintiff filed this case *pro se* against Menlo Expedite, alleging that it discriminated against her by failing to hire her based on her race. This matter comes before the Court on plaintiff's Motion for Default Judgment (Doc. #3) filed October 6, 2005.

Factual Background

On August 5, 2005, the clerk issued summons. On September 23, 2005, plaintiff filed a Return of Service which showed that she served the summons and complaint on defendant by certified mail with restricted delivery. See Doc. # 2. On October 6, 2005, plaintiff filed a Motion For Default Judgment (Doc. #6) which states that "on the 3rd of October, 2005, the Clerk of this Court, after reviewing the Application for Default and the supporting Affidavits, docketed entry of default judgment against the Defendant." The docket sheet does not reflect that plaintiff filed an application for default or that the clerk entered such default.

Analysis

Rule 4(c)(2), Fed. R. Civ. P., provides that "[s]ervice may be effected by any person who is not a party." By serving process herself, plaintiff has failed to properly execute service. Because plaintiff

proceeds *pro se* and 120 days for service under Rule 4(m), Red. R. Civ. P., has not expired, the Court gives her an opportunity to perfect service. Plaintiff shall properly serve defendant pursuant to Fed. R. Civ. P. Rule 4 **on or before November 21, 2005**. On or before **November 28, 2005**, plaintiff shall file proof of service or her complaint will be dismissed without prejudice.

Additionally, plaintiff has not followed the proper procedure under Rule 55, Fed. R. Civ. P., in her attempt to obtain default judgment. The record does not show that plaintiff has filed an application for default or that the clerk has entered default. Because proper procedure has not been followed in service of process and application for default, the Court overrules plaintiff's motion. The Court encourages plaintiff to review both the Federal Rules of Civil Procedure and the District of Kansas Rules for proper procedure.

IT IS THEREFORE ORDERED that plaintiff's Motion For Default Judgment (Doc. #3) filed October 6, 2005, be and hereby is **OVERRULED**. On or before **November 21, 2005**, plaintiff shall serve defendant. On or before **November 28, 2005**, plaintiff shall file proof of service or her complaint will be dismissed without prejudice.

Dated this 8th day of November, 2005, at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge