

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

DUANE CARNEY,
as next of friend of Ivan G. Carney

Plaintiff,

v.

ERIC F. MELGREN, et al.,

Defendants.

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No. 07-4087-CV-FJG

ORDER

On January 17, 2008, defendants filed a Notification to the Court (Doc. No. 18) stating they will not file an answer to plaintiff's Complaint due to plaintiff's failure to properly serve all defendants.

The Court agrees with defendants. Plaintiff has failed to properly serve the defendants in this case as prescribed by the Federal Rules. Plaintiff has sued eighty-one named defendants in this case in their individual capacities. Because plaintiff's allegations against the individually named defendants relate to defendants' employment with the United States government, plaintiff must comply with Fed. R. Civ. P. 4(i)(2)(B) in completing service. However, upon the Court's review of the record, the Court finds that although plaintiff has made efforts to effectuate service, plaintiff has not properly served defendants as prescribed in Fed. R. Civ. P. 4(i)(2)(B). Under Rule 4(i)(2)(B), when a plaintiff is serving an officer or employee of the United States in his or her individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States, service is effected "by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g)." There is no indication that plaintiff has effectuated service in this

manner. At most, plaintiff mailed a copy of the complaint to the workplace of three individually named defendants: Monti L Belot, Eric Melgren, and Monti L Belot. (See Docs. No. 5-7). However, there is no indication from the record that plaintiff also delivered a copy of the summons and the complaint to the United States attorney for the district in which the action is brought and to the Attorney General of the United States in accordance with Rule (i)(1).

In addition, plaintiff has failed to serve numerous other defendants in this case. On October 15, 2007, the Court had ordered plaintiff to show cause in writing why plaintiff's case should not be dismissed for failure to prosecute because plaintiff had failed to complete service (Doc. No. 10). After plaintiff responded to the Court's Order, the Court gave plaintiff a second opportunity to complete service and serve all named defendants. Thereafter, plaintiff had requested a motion for extension of time to complete service on all named defendants. The Court granted plaintiff's extension until January 28, 2008. However, plaintiff has since failed to effectuate service on all defendants by this deadline or any date thereafter. Under Fed. R. Civ. P. 4(m), plaintiff has 120 days after the filing of the complaint from which to complete service. Plaintiff filed his Complaint on July 20, 2007. Thus, service was to be completed by November 21, 2007. The Court warned in its January 16, 2008 Order that "[f]ailure to complete service by this date may result in dismissal of plaintiff's claims against defendants who have not been served." (Doc. No. 16). None of the defendants have been properly served.

Accordingly, plaintiff has failed to properly execute service as well as serve all defendants in this case. Because plaintiff has been unable to properly effectuate service against all defendants, the Court hereby **DISMISSES** plaintiff's Complaint for failure to

complete service and for failure to prosecute. The Court has provided plaintiff with ample opportunity to properly complete service in this case, but plaintiff has failed to do so. Plaintiff has had eight months to complete service since this case was filed on July 20, 2007. The Court cautioned plaintiff that failure to complete service may result in dismissal of plaintiff's claims.

Therefore, for the foregoing reasons, plaintiff's Complaint is **DISMISSED** against all defendants. It is further ordered that the Clerk of the Court send a copy of this Order by regular and certified mail to: 10231 Merton Street, Wichita, KS 67209.

IT IS SO ORDERED.

Date: 4/11/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge