

Plaintiff filed her Complaint on January 26, 2017 (ECF No. 1). A Notice and Order to Show Cause (ECF No. 4) was issued on May 15, 2017, after Plaintiff failed to serve Defendant with the summons and Complaint within the ninety-day time limit required by Fed. R. Civ. P. 4(m). On May 30, 2017, Plaintiff's Motion (ECF No. 7) to extend time to serve Defendant with summons and Complaint was granted, and Plaintiff's deadline to serve the summons and Complaint was extended to June 26, 2017 (ECF No. 8). After no return of service was filed, a second Notice and Order to Show Cause (ECF No. 9) was issued on July 13, 2017, requiring Plaintiff to respond no later than July 28, 2017 to avoid a recommendation of dismissal. The docket reflects Plaintiff was served with that Notice on July 17, 2017 (ECF No. 10) but Plaintiff has not responded as ordered. Furthermore, it does not appear Defendant has yet been served with the summons and Complaint.

RECOMMENDATION

Pursuant to Fed. R. Civ. P. 41(b), “if the plaintiff fails to prosecute” her case, “or to comply with these rules or a court order,” the Court may dismiss the action. Under D. Kan. Rule 41.1, the Court may issue an order to show cause why a case should not be dismissed for lack of prosecution, and “if good cause is not shown within the time prescribed by the show cause order, the court may enter an order of dismissal. The dismissal will be with prejudice unless the court otherwise specifies.”

Having considered the record, and noting the Plaintiff failed to respond to the most recent Notice and Order to Show Cause (ECF No. 9), the undersigned U.S. Magistrate Judge respectfully **recommends** Plaintiff’s Complaint be dismissed for lack of prosecution under Fed. R. Civ. P. 41(b) and D. Kan. Rule 41.1.

IT IS ORDERED that a copy of this recommendation be mailed to Plaintiff by certified mail. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), Plaintiff may file a written objection to the proposed findings and recommendations with the clerk of the district court within fourteen (14) days after being served with a copy of this report and recommendation. Failure to make a timely objection waives appellate review of both factual and legal questions.¹

IT IS SO ORDERED.

Dated this 7th day of August, 2017.

s/ Gwynne E. Birzer
GWYNNE E. BIRZER
United States Magistrate Judge

¹ *Morales-Fernandez v. I.N.S.*, 418 F.3d 1116, 1119 (10th Cir. 2005).