

DUSTIN D. COFFMAN,)
)
 Plaintiff,)
)
 v.) **Case No. 17-4070-SAC-GEB**
)
 HUTCHINSON COMMUNITY COLLEGE,)
 et al.,)
)
 Defendants.)
)

On September 22, 2017, U.S. Senior District Judge Sam A. Crow issued a Memorandum and Order in this action. Among other rulings, Judge Crow found that the individual defendants had not been properly served with process (ECF No. 28, at 7, 10). In addition to this finding, Judge Crow explained, at length, the law regarding proper service of individuals (see Order, ECF No. 28, at 6-7).

Despite those findings and instructions, a review of the docket reveals Plaintiff has not requested issuance of summons in order to properly serve the individual defendants. His most recent filing (ECF No. 36) suggests he sent notices and waivers of service to the individual defendants at their business addresses, but the waivers were not returned. If these defendants refuse to waive service, as is apparent here, it is Plaintiff's duty to serve

them with a summons under Fed. R. Civ. P. 4(e). And, under Fed. R. Civ. P. 4(m), Plaintiff has only 90 days from the filing of his Complaint in which to do so.¹

Both the law, and Judge Crow's recent order, are clear regarding proper service of the summons and Complaint upon individuals. Generally, if serving the individual defendants under Kansas law, each defendant must be personally served or served by certified mail, return receipt delivery to his or her home.² But "service upon an individual at his place of business without first attempting to serve him at his dwelling place does not constitute substantial compliance under Kansas law."³

In consideration of the above, the Court orders Plaintiff to **show cause** in writing to the undersigned United States Magistrate Judge, on or before **November 6, 2017**, why she should not recommend to the District Judge that his claims against the five individual defendants be dismissed with prejudice for lack of prosecution under Fed. R. Civ. P. 41(b) for his failure to serve the individual defendants as required by law. This Notice and Order to Show Cause shall be mailed to Plaintiff by certified mail, return receipt delivery.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 23rd day of October 2017.

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

¹ Plaintiff filed his Complaint on August 7, 2017, making his deadline for service November 6, 2017.

² See Fed. R. Civ. P. 4(e); K.S.A. §§ 60-303, -304(a).

³ *Schwab v. State of Kansas*, 2016 WL 4039613, at *4 (D. Kan. Jul. 28, 2016), *appeal dismissed*, No. 16-3295 (10th Cir. Oct. 14, 2016).