

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DWIGHT-WINFRED: TROYER,

Plaintiff,

ORDER

01-C-476-C

v.

INTERNAL REVENUE SERVICE,

Defendant.

On August 16, 2001, plaintiff Dwight-Winfred: Troyer filed this civil action seeking an order to compel the Internal Revenue Service to provide documents plaintiff requested under the Freedom of Information Act, 5 U.S.C. § 552(a). Although this case is now over four months old, plaintiff has not yet filed with the court proof that he has served his complaint on the defendant and the United States as required by Fed. R. Civ. P. 4(l).

Rule 4 describes the process by which a plaintiff must notify a defendant that the plaintiff has begun a federal suit. When a plaintiff names a defendant who is an officer or agency of the United States, Rule 4(i)(2) requires service to be accomplished

(2) . . . by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

Fed. R. Civ. P. 4(i)(1) provides that service upon the United States is accomplished

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia

Service on the defendant and, in this case, the United States Attorney General in Washington, D.C. and the United States Attorney for the Western District of Wisconsin, must be completed within 120 days after the filing of the complaint. Fed. R. Civ. P. 4(m). If service is not effected within 120 days, and if the plaintiff cannot show good cause why service was not made within that period, the action against the defendant is to be dismissed without prejudice.

As noted above, plaintiff filed his complaint on August 16, 2001. The 120-day time period for effecting service of process expired on December 14, 2001. Plaintiff has not written to explain his failure to serve his complaint on the defendant and the United States within the time allowed. However, it does appear from a deputy clerk's notation in the record that plaintiff may have contacted the court in October to request waiver of service of

process forms, which were sent to him on October 16, 2001. This suggests that plaintiff may be attempting to obtain waiver of service of process from the defendant. This effort at service, if plaintiff is engaging in it, is likely to prove unsuccessful.

The duty to waive personal service of process is not applicable to the United States and its officials and agencies. See Fed. R. Civ. P. 4(d) (individual, corporation or association subject to service under subdivisions (e)(f) or (h) [of Rule 4] has duty to respond to request for waiver of formal service of process). Officers and agencies of the government are subject to service under subdivision (i) of Rule 4. Moreover, there is no need to obtain waiver of personal service of process on government agencies or officers. As noted above, proper service is effected when plaintiff mails a copy of his complaint and a completed summons form by registered or certified mail to the United States Attorney General in Washington, D.C., the United States Attorney for the Western District of Wisconsin and the Internal Revenue Service. Proof of service is accomplished merely by sending the court a copy of the receipts plaintiff obtains from the post office when he makes the mailing.

Because plaintiff may be engaged in a misguided attempt to obtain waiver of service forms from the government, I will extend slightly the time within which he is to submit proof of service of his complaint on the defendant.

ORDER

IT IS ORDERED that plaintiff may have until January 7, 2002, in which to file proof of service of the summons and complaint upon the defendant and the United States as provided in Fed. R. Civ. P. 4(i)(1) and (2). If, by January 7, 2002, plaintiff has not filed proof of service of his complaint as required, or shown good cause for his failure to do so, the Clerk of Court is directed to enter judgment dismissing this case, without prejudice, for plaintiff's failure to prosecute.

Entered this 20th day of December, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge