

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

MARGE JARRELLS,

Plaintiff,

v.

SELECT PUBLISHING,

Defendant.

ORDER

00-C-433-C

Plaintiff is proceeding in this action on her claim that defendant Select Publishing discriminated against her on the basis of her age and race when it rejected her job application. Defendant has not yet filed a responsive pleading to the complaint, but this appears to be because plaintiff has not yet effected service of her complaint on the defendant.

Plaintiff has submitted copies of documents to show that she attempted to obtain a waiver of service of a summons form from the defendant by mailing her complaint, notice of the complaint and a waiver form on October 26, 2000, to the chief executive officer of the defendant corporation at the corporation's address, 6417 Normandy Lane, Madison, Wisconsin, 53719. It is not clear whether plaintiff provided the defendant with an extra copy of the notice and request as well as a self-addressed stamped envelope for returning the waiver

form to her. If she did not, she failed to comply with Fed. R. Civ. P. (d)(2)(G). In any event, defendant has not returned a signed waiver form to plaintiff.

Assuming plaintiff complied with all of the requirements of Fed. R. Civ. P. 4(d)(2) in attempting to obtain a waiver of service of the summons from defendant, plaintiff's next step is to arrange for personal service of a summons and complaint upon the defendant. She does not appear to have done that. Although the court sent her a summons form, plaintiff has returned it to the court with a written description of what she did in her attempts to serve defendant by mail. Fed. R. Civ. P. 4(h) provides that if a plaintiff is unsuccessful in obtaining a waiver of service of a summons from a defendant domestic corporation, then the plaintiff must arrange to serve the defendant personally with a summons and complaint. In particular, Fed. R. Civ. Pro. 4(h) provides

(h) Unless otherwise provided by federal law, service upon a domestic . . . corporation . . . from which a waiver of service has not been obtained and filed, shall be effected:

(1) . . . in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to received service and the statute so requires, by also mailing a copy to the defendant

Alternatively, plaintiff may choose to serve the defendant in a manner allowed under Wisconsin state law. Wis. Stat. § 801.11 provides that service of a summons and complaint may be effected upon a domestic corporation

(a) By personally serving the summons upon an officer, director or managing agent of the corporation In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

Whether plaintiff serves defendant under federal or state law, however, the service must be by someone other than her. Both Fed. R. Civ. P. 4(c) and Wis. Stat. § 801.10 provide that the complaint is to be served by any adult “who is not a party” to the lawsuit.

Accordingly, another summons form is enclosed to plaintiff with a copy of this order.

A plaintiff has 120 days after filing a complaint in which to serve the defendant. Fed. R.

Civ. P. 4(m). Rule 4(m) also provides as follows:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Plaintiff’s complaint is considered to have been filed on August 21, 2000, when she paid the fee for filing her complaint. One hundred and twenty days from August 21 is December 19, 2000.

It is clear that plaintiff’s lack of understanding of the requirements for serving her complaint on the defendant rather than a lack of diligence is the reason plaintiff has failed to serve defendant within the time allowed. Therefore, I conclude that there is good cause to extend the deadline slightly to allow her one last chance to serve the defendant with her complaint.

ORDER

IT IS ORDERED that if, by December 29, 2000, plaintiff fails to submit proof of service of her complaint on the defendant, or show cause for her failure to do so, then the Clerk of Court shall enter judgment, dismissing this case for plaintiff's failure to prosecute.

Entered this 18th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge