

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 5:10-cv-381-JMH
)
 v.)
)
 ESTATE OF JAMES S. TOWNSEND,)
 et al.,) **MEMORANDUM OPINION & ORDER**
)
 Defendants.)
)

*** ** ** ** **

This cause is before the Court upon the motions of the plaintiff, the United States of America, for the entry of warning orders and for the appointment of Warning Order Attorneys for the Defendant Estate of James S. Townsend, Johanna Bowsher, Administratrix [DE 13], and Defendant Michael Townsend [DE 14].

Fed. R. Civ. P. 4(e)(1) provides that an individual may be served following the state law for serving a summons, which may include, in the Commonwealth of Kentucky, service by warning order attorney under the auspices of Ky. CR 4.05, 4.06, and 4.07. Thus, the Court has taken a careful look at the United States' Motions in light of Ky. CR 4.05, which provides for parties that may be served by a warning order attorney in the Commonwealth. Specifically, Ky. CR 4.05, when read together with Ky. CR 4.06 and 4.07, permits the use of a warning order attorney for service on the following parties:

(a) An individual who is a nonresident of this

state and known or believed to be absent therefrom, or (b) a corporation, or a partnership or unincorporated association which is subject to suit under a common name, having no agent in this state known to the plaintiff upon whom a summons may be lawfully served, or (c) an individual who has been absent from the state for four months or who has departed therefrom with the intent to delay or defraud his creditors, or (d) an individual who has left the county of his residence to avoid the service of a summons or has so concealed himself that a summons cannot be served upon him, or (e) an individual whose name or place of residence is unknown to the plaintiff

Ky. CR 4.05.

Having reviewed the record of this matter, the Court notes that Plaintiff was able to serve Johanna Bowsher as an individual heir of James Townsend at the address listed in the materials associated with this matter. With respect to counsel's efforts to serve her at the same address with summons as the Administratrix of the estate of James Townsend, the certified mail receipt returned to this Court indicates that the item was neither refused nor returned. Rather an individual named Robert Bowsher signed for the items delivered. Similarly, with respect to counsel's efforts to serve Michael Townsend, an individual, the return receipt for the certified mail indicates that the item was neither refused nor returned. Rather, an individual by the name of Lula Thompson signed the receipt. It appears that she also corrected the address and made a notation, "P.O.A.", on the card.

Thus, Plaintiff has not demonstrated that either of these parties fall within the purview of Ky. CR 4.05. Until the United

States can demonstrate that they do, no warning order attorney shall be appointed under the auspices of Fed. R. Civ. P. 4(e).

Accordingly, **IT IS ORDERED** that the United States' Motions for Warning Order Attorneys [DE 13 and 14] are **DENIED** without prejudice to their refiling should it become necessary.

This the 3rd day of December, 2010.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge