

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

Jennifer Penman,

)

No. CV-08-1053-PHX-LOA

10

Plaintiff,

)

ORDER TO SHOW CAUSE

11

vs.

)

12

Zwicker & Associates, P.C.

)

13

Defendant.

)

14

15

This matter arises on the Court’s review of the file. The Complaint was filed on June 4, 2008, over 120 days from today’s date. The District Court’s file does not reflect an affidavit of service of process on Defendant. Plaintiff has consented in writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. § 636(c). (docket # 5)

16

17

18

19

20

Pursuant to FED.R.CIV.P. 4(m) “if 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. . . .” Thus, the Court may dismiss an action where a plaintiff fails to show “good cause” for failing to serve the summons and complaint within the 120 day period. *Townsel v. County of Contra Costa*, 820 F.2d 319 (9th Cir. 1987); *In re Sheehan*, 2001 WL 682453 (9th Cir. 2001). Ignorance of the existence of the 120 day rule does not constitute “good cause.” *Townsel*, 820 F.2d at 320. The *Townsel* court expressly noted that the 120 day rule “force[s] parties. . . to be diligent in prosecuting their causes of action.” *Id.*

21

22

23

24

25

26

27

28

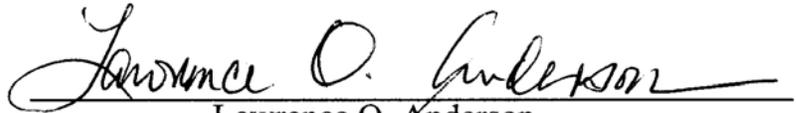
1 Therefore, the court stated that “to hold that complete ignorance of the rule . . . constitutes
2 good cause for untimely service would allow the good cause exception to swallow the rule.”
3 *Id.*

4 It appears that Plaintiff has not accomplished service of process on Defendant.
5 In view of the foregoing, the court orders Plaintiff to show cause in writing on or before
6 **Friday, October 17, 2008** why her lawsuit against Defendant should not be dismissed
7 without prejudice for failure to serve process pursuant to Rule 4(m), FED.R.CIV.P.

8 Accordingly,

9 **IT IS ORDERED** that Plaintiff show cause in writing on or before **5:00 p.m.**
10 **on Monday, October 17, 2008** why her claims against Defendant should not be dismissed
11 without prejudice for failure to serve process pursuant to Rule 4(m), FED.R.CIV.P.

12 Dated this 3rd day of October, 2008.

13
14 

15 Lawrence O. Anderson
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25
26
27
28