

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Donna Mae Robinson,  
Plaintiff,  
vs.  
Heritage Elementary School, et al.,  
Defendants.

No. CV-09-0541-PHX-LOA

**ORDER**

This case arises on the Court’s periodic review of this file. Because Plaintiff’s efforts to serve the corporate Defendant and the individual Robinson Defendants were defective under either the federal or State procedural rules, the Court will *sua sponte* quash Plaintiff’s ineffective service on Defendants and will extend by 60 days from the date of entry of this Order for Plaintiff to either (1) properly serve all three Defendants in accordance with applicable law, or (2) obtain and file waivers of service as Fed.R.Civ.P. 4(d) allows. *Fishman v. AIG Ins. Co.*, 2007 WL 4248867, \*3 (D.Ariz. 2007). Failure to properly and timely serve Defendants or to properly and timely file waivers will result in dismissal of this action.

**BACKGROUND**

On March 17, 2009, *pro se* Plaintiff Donna Mae Robinson (“Plaintiff”) filed this Title VII action against Defendant Heritage Elementary School (“the School”) and

1 individual Defendants Aaron Robinson and Paulette Robinson, alleging wrongful  
2 termination, retaliation and discrimination based on Plaintiff's religious beliefs in her  
3 employment with the School as a First Grade Teacher. (docket # 1 at 4) The Complaint  
4 reveals Plaintiff resides in Peoria,<sup>1</sup> Arizona and the School is allegedly located at 6622 N.  
5 134<sup>th</sup> Drive, Glendale, Arizona. (*Id.*) Neither the Complaint nor the Certificates of Service  
6 reveal where Defendants Aaron Robinson and Paulette Robinson reside. (docket ## 8,9)  
7 The Complaint does not specifically indicate who employed Plaintiff at the School.

8           On March 23, 2009, Plaintiff expressly consented in writing to magistrate-  
9 judge jurisdiction pursuant to 28 U.S.C. § 636 (c). (docket # 4) Shortly thereafter, the Court  
10 found Plaintiff was financially able to pay the filing fee and denied her Motion to Proceed  
11 In Forma Pauperis. (docket # 5) That order also instructed Plaintiff (1) "that unless [a]  
12 Defendant waives service of process per Rule 4(d)(1), Plaintiff shall have [such] Defendant  
13 served with process (Summons and Complaint) within four (4) months of March 17, 2009  
14 pursuant to Rule 4(m), FED.R.CIV.P.," and (2) "[a] plaintiff's *pro se* status and ignorance  
15 of the relevant rules of service do not excuse a plaintiff's failure to effect proper service of  
16 process or failure to abide by the rules of the court in which he litigates." (*Id.* at 2) (internal  
17 quotation marks and citations omitted)

18           The file reflects on April 23, 2009, Plaintiff filed two "Returns of Service,"  
19 identified on the docket as Certificates of Service, indicating, at best, Plaintiff served the  
20 School and the Robinson Defendants on April 21, 2009 by "other" means, i.e., by "certified  
21 mail." (docket ## 8 at 2, 9 at 2) Upon review of each Receipt, it appears that Plaintiff mailed  
22 a copy of the Summons and Complaint<sup>2</sup> to Aaron Robinson and "Mrs. P. Robinson" to the  
23

---

24           <sup>1</sup> The Complaint actually indicates Plaintiff lives in "Teoria," Arizona. This is an  
25 obvious typographical error as there is no city or town named Teoria in Arizona. (docket #  
26 1 at 3)

27           <sup>2</sup> Neither Receipt nor Return of Service indicates what was actually mailed to the  
28 Robinson Defendants except document 8 states: "certified mail enclosed w/ Aaron  
Robinson's letter." (docket ## 8 at 2)

1 School's purported address at 6622 N. 134<sup>th</sup> Drive, Glendale, Arizona, 85307. Nothing in the  
2 Court's file indicates Plaintiff attempted to serve Defendant Heritage Elementary School, a  
3 non-profit Arizona corporation,<sup>3</sup> other than the mailing to Aaron Robinson.

#### 4 SERVICE OF PROCESS

5 "Service of process is the *mechanism* by which the court [actually] acquires"  
6 the power to enforce a judgment against the defendant's person or property. *S.E.C. v. Ross*,  
7 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *United States v. 2,164 Watches, More or Less*  
8 *Bearing a Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 771 (9th Cir. 2004)  
9 (emphasis in original). "In other words, service of process is the means by which a court  
10 asserts its jurisdiction over the person. *Id.* (citing *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir.  
11 1986) ("A federal court is without personal jurisdiction over a defendant unless the defendant  
12 has been served in accordance with Fed. R. Civ. P. 4.").

#### 13 **A. Federal Rules of Civil Procedure**

14 A plaintiff must serve all defendants with a copy of the summons and  
15 complaint within 120 days of filing a complaint. Rule 4(m), FED.R.CIV.P. Rule 4 also  
16 contains detailed provisions on the manner in which service should occur. A plaintiff may  
17 also utilize the service of process rules that apply in the state in which the federal district  
18 court is located or, if service is effected in another state, the rules of that state. Rule 4(e)(1),  
19

---

20  
21 <sup>3</sup> According to the Arizona Corporation Commission website, Defendant Heritage  
22 Elementary School is a non-profit Arizona corporation in good standing with Warren &  
23 Banker, PLC, 4300 N. Miller Rd, #141, Scottsdale, Az, 85251, as its statutory agent.  
24 ([www.cc.state.az.us/default.asp](http://www.cc.state.az.us/default.asp), click on Corporate Records, enter Heritage Elementary  
25 School) This website further informs that Defendants Aaron Robinson and Paulette  
26 Robinson are the corporation's President and Secretary, respectively. Significantly, the  
27 Defendants Robinson reside or may be found at a Glendale, Arizona address different than  
28 the Peoria address where Plaintiff mailed the Summons and Complaint. (*Id.*) A district court  
may properly take judicial notice of public records filed with the Arizona Corporation  
Commission because such filings are "not subject to reasonable dispute." Fed.R.Evid. 201(b);  
*Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007)  
(district court may take judicial notice of matters of public record.).

1 FED.R.CIV.P.<sup>4</sup> Therefore, service of process will be upheld if it conforms to either federal  
2 or Arizona's service of process rules.

3 Under Rule 4, FED.R.CIV.P., a corporate or business entity may be served by  
4 delivering a copy of the summons and complaint to: 1) an officer, 2) a managing or general  
5 agent, or 3) any other agent authorized by appointment or by law to receive service of  
6 process. Fed.R.Civ.P. 4(h)(1).<sup>5</sup> "When serving a corporation, Rule 4(h) requires personal

7 \_\_\_\_\_  
8 <sup>4</sup> Rule 4(e), FED.R.CIV.P., provides:

9 (e) Serving an Individual Within a Judicial District of the United States.  
10 Unless federal law provides otherwise, an individual--other than a minor, an  
11 incompetent person, or a person whose waiver has been filed--may be served  
12 in a judicial district of the United States by:

13 (1) *following state law for serving a summons* in an action brought in  
14 courts of general jurisdiction in the state *where the district court is*  
15 *located* or where service is made; or

16 (2) doing any of the following:

17 (A) delivering a copy of the summons and of the complaint to the  
18 individual personally;

19 (B) leaving a copy of each at the individual's dwelling or usual place of  
20 abode with someone of suitable age and discretion who resides there;  
21 or

22 (C) delivering a copy of each to an agent authorized by appointment or  
23 by law to receive service of process.

24 Rule 4(e), FED.R.CIV.P. (emphasis added).

25 <sup>5</sup> Rule 4(h), FED.R.CIV.P., provides:

26 (h) Serving a Corporation, Partnership, or Association. Unless federal law  
27 provides otherwise or the defendant's waiver has been filed, a domestic or  
28 foreign corporation, or a partnership or other unincorporated association that  
is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual;  
or

(B) by delivering a copy of the summons and of the complaint to an  
officer, a managing or general agent, or any other agent authorized by

1 service on someone at the corporation, and service by mail to a general corporate address is  
2 not sufficient.” *Belle v. Chase Home Finance LLC*, 2007 WL 1518341, at \*3 (S.D.Cal. 2007)  
3 (citing *Larsen v. Mayo Med. Ctr.*, 218 F.3d 863, 868 (8th Cir. 2000) (service on corporation  
4 was ineffective “because the summons and complaint were mailed and not personally served  
5 on anyone during the limitations period.”)). In the present case, Plaintiff purportedly mailed  
6 a copy of the Summons and Complaint to Aaron Robinson, President of the School, and  
7 “Mrs. P. Robinson,” Secretary of the School, to the School’s “general corporate address.”  
8 Clearly, this is insufficient to properly effect service on either the School or the Robinson  
9 Defendants under Rule 4(h)(1), FED.R.CIV.P.

#### 10 **B. Arizona Rules of Civil Procedure**

11 As previously mentioned, service of process is sufficient if it conforms either  
12 to the applicable federal or state rule for service of process. Rule 4(e)(1), FED.R.CIV.P.  
13 Thus, to determine whether Defendants were properly served in this case under Arizona’s  
14 service of process rules, the Court will look to the Arizona Rules of Civil Procedure.

15 Service upon a corporation under Arizona Rule 4.1(k), Az.R.Civ.P., is  
16 remarkably similar to Fed.R.Civ.P. 4(h)(1), and states as follows:

17 Service upon a domestic or foreign corporation . . . from which a  
18 waiver has not been obtained and filed, shall be effected *by delivering*  
19 a copy of the summons and of the pleading to a partner, an officer, a  
20 managing or general agent, or to any other agent authorized by  
21 appointment or by law to receive service of process and, if the agent is  
one authorized by statute to receive service and the statute so requires,  
by also mailing a copy to the party on whose behalf the agent accepted  
or received service.

22 Rule 4.1(k), Az.R.Civ.P. (emphasis added) Arizona’s Rules of Civil Procedure, therefore,  
23 require “delivering” a copy of the summons and complaint to a defendant and do not  
24 authorize service by mail on an in-state Arizona corporation. Only “[w]hen the whereabouts

---

25  
26  
27 appointment or by law to receive service of process and--if the agent is  
28 one authorized by statute and the statute so requires--by also mailing a  
copy of each to the defendant;

1 of a party *outside the state* is known” do Arizona’s Rules allow service by mail, Rule 4.2(c),<sup>6</sup>  
2 Az.R.Civ.P. (emphasis added), or by leave of the court upon a showing that “reasonable  
3 efforts . . . to assure that actual notice” of the lawsuit was given to a defendant. Rule 4.1(m),  
4 Az.R.Civ.P.

5 Similarly, service upon an individual defendant residing in Arizona is governed  
6 by Rule 4.1(d),<sup>7</sup> Az.R.Civ.P., which requires “delivering a copy of the summons and

7  
8 <sup>6</sup> Rule 4.2(c), Az.R.Civ.P., provides:

9 Rule 4.2(c). Service by Mail; Return

10 When the whereabouts of a party outside the state is known, service may be  
11 made by depositing the summons and a copy of the pleading being served in  
12 the post office, postage prepaid, to be sent to the person to be served by any  
13 form of mail requiring a signed and returned receipt. Service by mail pursuant  
14 to this subpart and the return thereof may be made by the party procuring  
15 service or by that party's attorney. Upon return through the post office of the  
16 signed receipt, the serving party shall file an affidavit with the court stating (1)  
17 that the party being served is known to be located outside the state, (2) that the  
18 summons and a copy of the pleading were dispatched to the party being  
19 served; (3) that such papers were in fact received by the party as evidence by  
20 the receipt, a copy of which shall be attached to the affidavit; and (4) the date  
of receipt by the party being served and the date of the return of the receipt to  
the sender. This affidavit shall be prima facie evidence of personal service of  
the summons and the pleading and service shall be deemed complete and time  
shall begin to run for the purposes of Rule 4.2(m) of these Rules from the date  
of receipt by the party being served, provided that no default may be had on  
such service until such an affidavit has been filed.

21 Rule 4.2(c), Az.R.Civ.P.

22 Even if a Defendant resides outside the state, Plaintiff did not properly serve  
23 that Defendant under Arizona law because she did not file an affidavit setting forth the  
24 requirements itemized in Rule 4.2(c), Az.R.Civ.P., and attaching the postal receipt signed by  
25 that Defendant. *Postal Instant Press, Inc. v. Corral Restaurants, Inc.*, 925 P.2d 260 (Ariz.  
26 1996) (court lacked jurisdiction over corporation served by mail where no acknowledgment  
of receipt of service under oath was returned and filed), *supplemented on reconsideration*,  
930 P.2d 1001 (Ariz. 1997).

27 <sup>7</sup> Rule 4.1(d), Az.R.Civ.P., states:  
28

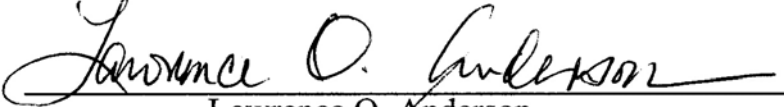
1 [complaint] to that individual personally,” leaving copies “at that individual’s dwelling  
2 house . . . with some person of suitable age and discretion then residing therein,” or by  
3 delivering copies to the individual’s authorized agent “to receive service of process.” Rules  
4 4.1(d) and 4.1(a), Az.R.Civ.P. (“All process may be served anywhere within the territorial  
5 limits of the state.”). Thus, Plaintiff’s attempted service by mail on the School and  
6 Defendants Robinson was also ineffective under the Arizona Rules of Civil Procedure.

7 Concluding that Plaintiff’s attempted service was ineffective as a matter of law  
8 under both the Federal and Arizona Rules of Civil Procedure,

9 **IT IS ORDERED** that Plaintiff’s ineffective service on Defendants is hereby  
10 **QUASHED**.

11 **IT IS FURTHER ORDERED** that Plaintiff shall have **sixty (60) days** from  
12 the date of the entry of this Order to either (1) properly serve all three Defendants in  
13 accordance with applicable federal or Arizona law, or (2) obtain and file waivers of service  
14 as Fed.R.Civ.P. 4(d) allows. Absent good cause shown, Plaintiff’s failure to properly serve  
15 all Defendants within this deadline shall result in the dismissal of this case or dismissal of  
16 any unserved Defendant.

17 DATED this 2nd day of June, 2009.

18   
19 \_\_\_\_\_  
20 Lawrence O. Anderson  
21 United States Magistrate Judge

22 \_\_\_\_\_  
23 (d) Service of Summons Upon Individuals. Service upon an individual from  
24 whom a waiver has not been obtained and filed, other than those specified in  
25 paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a  
26 copy of the summons and of the pleading to that individual personally or by  
27 leaving copies thereof at that individual's dwelling house or usual place of  
28 abode with some person of suitable age and discretion then residing therein or  
by delivering a copy of the summons and of the pleading to an agent  
authorized by appointment or by law to receive service of process.