

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**DENNIS BREWER; MICHAEL JILES;
JEFFERY CARTER; and CHRIS JACKSON,
all suing individually and as representatives of
others similarly situated in employment with
City of West Memphis, Arkansas**

PLAINTIFFS

v.

No. 3:12-cv-28-DPM

**WAYNE GATELY, individually and in his official
capacity as Chief of West Memphis Fire Department;
WILLIAM JOHNSON, individually and in his official
capacity as Mayor of West Memphis, Arkansas; and
CITY OF WEST MEMPHIS, ARKANSAS**

DEFENDANTS

ORDER

On 13 July 2012 the Court ordered Addie Burks, counsel for the plaintiffs, to show cause why this case, which was filed in January 2012, should not be dismissed for failure to make timely service and why she should not be referred for possible professional discipline. *Document No. 7.* At a 31 July 2012 hearing, and in various filings, Burks satisfied the Court's concerns with a promise that she would put the case back on track. The Court

reopened and extended the service window to 31 August 2012. *Document No. 10.*

Summons was issued August 14th. In early September, the defendants moved to quash service—summons was served without an attached complaint. *Document No. 11.* More than a month passed. In early October, Burks responded that the motion was moot because on September 21st she had perfected service.* *Document No. 14, at 2.* The defendants then moved again to quash service—this time, as untimely—and to dismiss the case for failure to prosecute and failure to comply with the Court’s orders. *Document Nos. 16 & 17 at 4–5.* Burks has not responded. She has not shown good cause or sought to reopen and extend the time for service again.

In this circumstance the Court has discretion to quash service or to dismiss. *Haley v. Simmons*, 529 F.2d 78, 79 (8th Cir. 1976) (*per curiam*). The Court concludes both are appropriate. In the ten months since this case was filed, plaintiffs’ counsel has taken few steps to get the case moving. Most of those steps have been either late or wrong. And the Court has no confidence

*The defendants say they were served on September 25th. *Document No. 16, at 2.*

things will improve. The prejudice in these missteps is to the efficient administration of justice: ten months in, this case remains bogged down in simple service issues.

Motions, *Document Nos. 11 & 16*, granted. The August service attempt is quashed for noncompliance with Rule 4(c)(1). The September service attempt is quashed as untimely. The plaintiffs' claims are dismissed without prejudice for failure to make timely service, FED. R. CIV. P. 4(m).

So Ordered.



D.P. Marshall Jr.
United States District Judge

15 November 2012