

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

**KIMBERLY PEACE**

**PLAINTIFF**

**v.**

**4:09CV00849-WRW**

**BANK OF AMERICA NA, et al.**

**DEFENDANTS**

**ORDER**

Pending is Defendant Bank of America's Renewed Motion to Dismiss (Doc. No. 20). Plaintiff has responded, and Defendant has replied.<sup>1</sup> For the reasons set out below, Defendant's Motion is GRANTED.

Rule 4 of the Arkansas Rules of Civil Procedure directs that a summons include "the time within which these rules require the defendant to appear, file a pleading, and defend,"<sup>2</sup> and Rule 12 provides that "a defendant not residing in this state shall file an answer within 30 days after service . . . ."<sup>3</sup> The Arkansas Supreme Court has found summons issued to a foreign defendant defective where the summons indicated the defendant had 20 days -- rather than 30 -- to respond.<sup>4</sup>

Rule 4 also provides that service of a summons on a defendant not residing in Arkansas "may be made by the plaintiff . . . by any form of mail addressed to the person to be served with a

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<sup>1</sup>Doc. Nos. 24, 27.

<sup>2</sup>Ark. R. Civ. P. 4(b).

<sup>3</sup>Ark. R. Civ. P. 12(a)(1)(A).

<sup>4</sup>See *Rettig v. Ballard*, 2009 Ark. 629 (2009).

return receipt requested and delivery restricted to the addressee or the agent of the addressee.

The addressee must be a natural person specified by name . . . .”<sup>5</sup>

The summons here instructs Defendant to answer Plaintiff’s complaint within 20 days.<sup>6</sup> Because Defendant is a foreign defendant entitled to 30 days to answer a complaint, the summons is defective, and dismissal under Arkansas Rule of Civil Procedure 12(b)(4) is proper.

Further, because Plaintiff did not address her service of summons to a natural person specified by name,<sup>7</sup> dismissal under Arkansas Rule of Civil Procedure 12(b)(5) is appropriate.

The Court directed Plaintiff to comply with the relevant rules of civil procedure,<sup>8</sup> but the record does not reflect that she has done so.

Accordingly, Defendant’s Motion is GRANTED and Plaintiff’s Complaint against Defendant is DISMISSED without prejudice.

IT IS SO ORDERED this 2<sup>nd</sup> day of February, 2010.

/s/Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup>Ark. R. Civ. P. 12(d)(8)(A).

<sup>6</sup>Doc. No. 1.

<sup>7</sup>*Id.*

<sup>8</sup>Doc. No. 17.