

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

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ROBERT ROGERS,

Plaintiff,

v.

WARDEN A.K. SCRIBNER, et al.,

Defendants.

CASE NO. 1:05-cv-00569-AWI-SKO PC

ORDER TO SHOW CAUSE WHY DEFENDANT MONTGOMERY SHOULD NOT BE DISMISSED FROM THIS ACTION

SHOW CAUSE DUE WITHIN 30 DAYS

Plaintiff Robert Rogers (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On September 1, 2009, the Court issued an order directing the U.S. Marshal to serve Defendants A.K. Scribner, Walker, Miller, Montgomery, Alvarez, Stockman, Ortiz, Bravo, Yamamoto, Vella, and Villareal with a summons and a copy of Plaintiff’s complaint. (Doc. #16.) On November 2, 2009, a summons was returned unexecuted as to Defendant Montgomery.<sup>1</sup> (Doc. #19.) The U.S. Marshal indicated that Defendant Montgomery was no longer employed at the address provided by Plaintiff.

Federal Rule of Civil Procedure 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

<sup>1</sup>The remaining Defendants have made appearances in this action.

1 Defendant Montgomery has not been served within the 120 day deadline set forth in Rule 4(m).  
2 Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915 and is entitled to have process  
3 served by a U.S. Marshal. 28 U.S.C. § 1915(d), Federal Rule of Civil Procedure 4(c)(3). However,  
4 the inability to serve Defendant Montgomery appears to stem from Plaintiff's failure to provide  
5 sufficient information to locate Defendant and effect service. See Walker v. Sumner, 14 F.3d 1415,  
6 1422 (9th Cir. 1994) (dismissal under Rule 4 appropriate where Plaintiff fails to provide U.S.  
7 Marshal with sufficient information to serve defendant) abrogated on other grounds by Sandin v.  
8 Connor, 515 U.S. 472 (1995). Plaintiff is responsible for providing sufficient information to the U.S.  
9 Marshal to effect service of process.

10 Accordingly, Plaintiff is HEREBY ORDERED TO SHOW CAUSE within **thirty (30) days**  
11 why Defendant Montgomery should not be dismissed from this action pursuant to Federal Rule of  
12 Civil Procedure 4(m).<sup>2</sup>

13  
14 IT IS SO ORDERED.

15 **Dated: May 15, 2010**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 \_\_\_\_\_  
<sup>2</sup>Should Plaintiff have more current information on the whereabouts of Defendant Montgomery, he should provide it to the Court at this time.