



1 attached to which is no proof of service. Indeed, there is no proof of service on  
2 the original complaint. More importantly no mention is made of a summons  
3 being served on either defendant advising the defendant of the name of the court  
4 and parties, the name and address of the plaintiff, the time within which the  
5 defendant must appear and defend and the consequences of failure to appear  
6 and defend. (Fed R Civ Proc Rule 4(a).

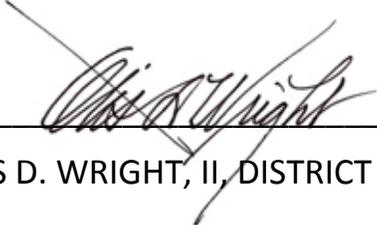
7 In general, “[a] summons must be served with a copy of the complaint. The  
8 plaintiff is responsible for having the summons and complaint served within the  
9 time allowed by Rule 4(m) and must furnish the necessary copies to the person  
10 who makes service.” (Rule 4(c)(1).) Lastly, there has been a failure to comply  
11 with Rule 4(m). Fed R Civ Proc 4(m) provides in part:

12 If a defendant is not served within 120 days after the complaint is filed, the  
13 court - on motion or on its own after notice to the plaintiff - must dismiss  
14 the action without prejudice against that defendant or order that service be  
15 made within a specified time.

16 Here, the Second Amended Complaint was filed June 20, 2008. By rule,  
17 proof of service of the summons and complaint was to have been filed with the  
18 court no later than October 20, 2008, nearly two years ago.

19 IT IS HEREBY ORDERED that Plaintiff must file a proof of service of the  
20 summons and complaint on defendants within 90 days of this order or suffer  
21 dismissal of this complaint without prejudice.

22  
23 DATED: September 20, 2010

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25 \_\_\_\_\_  
26 OTIS D. WRIGHT, II, DISTRICT JUDGE  
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