

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GILBERT ROMAN,

Plaintiff,

v.

Case No. 8:16-cv-3449-T-33AEP

TYCO SIMPLEX GRINNELL,

Defendant.

_____ /

ORDER

This matter comes before the Court *sua sponte* and pursuant to pro se Plaintiff Gilbert Roman's Motion to Return Copies of Summons and Complaint (Doc. # 4), filed on December 30, 2016. For the reasons that follow, the Motion is denied. Furthermore, the Court takes this opportunity to explain the requirements of service to Roman.

I. Discussion

In his Motion, Roman requests that the Court return copies of Roman's summons and Complaint to him so that he may serve the Defendant. (Doc. # 4). However, the Court cannot issue a summons on a plaintiff's motion. Rather, a plaintiff must apply to the Clerk's Office with a properly completed

summons that the Clerk then signs, seals, and issues to the plaintiff. As Federal Rule of Civil Procedure 4(b) explains:

On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

Fed. R. Civ. P. 4(b). A summons provided to the Clerk must:

(A) name the court and the parties; (B) be directed to the defendant; (C) state the name and address of the plaintiff's attorney—or-if unrepresented-of the plaintiff; (D) state the time within which the defendant must appear and defend; [and] (E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint.

Fed. R. Civ. P. 4(a)(1).

The summons Roman mailed to the Clerk did not comply with the requirements of Rule 4, and thus cannot be issued. Roman must complete a new summons containing all the required information and present it to the Clerk for issuance. The preferred summons form, form AO 440, is available on the Middle District of Florida's website on the "Proceeding without a Lawyer" page, available at https://www.flmd.uscourts.gov/pro_se/docs/pro-seForms.htm. Because "a summons must be served with a copy of the complaint," it is imperative that Roman submit a properly

completed summons form to the Clerk's Office to be signed, sealed, and then returned to him. Fed. R. Civ. P. 4(c)(1).

Once Roman is issued a summons, Roman must serve on the Defendant the summons and a copy of the Complaint, which he rather than the Court or Clerk provides, in the manner contemplated by Rule 4. The methods for serving an individual within a judicial district of the United States are detailed in Rule 4(e), and the requirements for service on a corporation, partnership, or association are outlined in Rule 4(h). Under Rule 4(h)(1), a corporation, partnership, or association within a judicial district of the United States may be served in the same manner outlined for serving individuals in Rule 4(e)(1) or

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 appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.

Fed. R. Civ. P. 4(h)(1)(b).

Additionally, "[t]he plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service." Fed. R. Civ. P. 4(c)(1). The deadline for Roman to accomplish service is **March 20, 2017**, which is 90

days from the date he filed the Complaint. See Fed. R. Civ. P. 4(m). Failure to properly effect serve of process by this date may result in dismissal of the case. Id.

Once service has been accomplished, Roman is required to file the proof of service with the Court in accordance with Rule 4(1). That Rule states the following,

Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

Fed. R. Civ. P. 4(1)(1).

If Roman is interested in maintaining the present action, he must become familiar with the Federal Rules of Civil Procedure, along with the Local Rules of the Middle District of Florida. As mentioned above, the "Proceeding without a Lawyer" page on the Middle District of Florida's website is one valuable resource regarding the litigation process to which Roman may refer, but on which he should not exclusively rely.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

- (1) As the Court does not issue summonses, Plaintiff Gilbert Roman's Motion to Return Copies of Summons and Complaint (Doc. # 4) is **DENIED**. If Roman wishes to proceed in this

action, he must complete a summons and present it to the Clerk's Office for issuance.

- (2) Once the summons is issued by the Clerk, Roman must serve a copy of the Complaint and summons on the Defendant by **March 20, 2017**, as required by Federal Rule of Civil Procedure 4.
- (3) After Roman has served the Defendant, he must file a proof of service document with the Court.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 3rd day of January, 2017.

