

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 5:10-cv-377-JMH
)	
v.)	
)	
TERESA BISHOP, et al.,)	
)	MEMORANDUM OPINION & ORDER
Defendants.)	
)	

 ** ** ** ** **

This cause is before the Court upon the Motion of Plaintiff United States of America for the Appointment of a Warning Order Attorney for Defendant Teresa Bishop [DE 7].

Fed. R. Civ. P. 4(e)(1) provides that an individual may be served following the state law for serving a summons. In the Commonwealth of Kentucky, service by warning order attorney is permitted under the auspices of Ky. CR 4.05, 4.06, and 4.07. Specifically, Ky. CR 4.05, when read together with Ky. CR 4.06 and 4.07, permits the use of a warning order attorney for service on the following parties:

- (a) An individual who is a nonresident of this state and known or believed to be absent therefrom, or
- (b) a corporation, or a partnership or unincorporated association which is subject to suit under a common name, having no agent in this state known to the plaintiff upon whom a summons may be lawfully served, or
- (c) an individual who has been absent from the state for four months or who has departed therefrom with the intent to delay or defraud his creditors, or
- (d) an

individual who has left the county of his residence to avoid the service of a summons or has so concealed himself that a summons cannot be served upon him, or (e) an individual whose name or place of residence is unknown to the plaintiff

Ky. CR 4.05.

Plaintiff returned the summons issued as to Defendant Teresa Bishop to the clerk, unexecuted, on December 3, 2010. Attached to this return is an envelope addressed to Teresa Bishop which indicates that the United States Postal Service was unable to deliver the summons by certified mail because there was "no mail receptacle" at the address to which the summons was addressed. Plaintiff has not indicated to the Court that Defendant is an individual who is a nonresident of this state, "known or believed to be absent therefrom" or "absent from the state for four months or who has departed therefrom with the intent to delay or defraud his creditors," or an individual "who has left the county of [her] residence to avoid the service of a summons or has so concealed [her]self that a summons cannot be served upon [her], or "an individual whose name or place of residence is unknown to the plaintiff." In other words, Plaintiff has not demonstrated to the Court that this is an instance in which service of summons on Defendant Bishop by a warning order attorney would be appropriate under Ky. CR 4.05. Until the United States can so demonstrate, no warning order attorney shall be appointed under the auspices of Fed. R. Civ. P. 4(e).

In the meantime, Plaintiff is reminded that, where the conditions described in Ky. CR 4.05 do not exist, a variety of other options for service of process are permitted under Fed. R. Civ. P. 4. These include delivering a copy of the summons and complaint to the individual or the individual's authorized agent for service of process under Fed. R. Civ. P. 4(e)(2)(A) and (C) and leaving a copy of the summons and complaint "at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there" under Fed. R. Civ. P. 4(e)(2)(B). Further, pursuant to Fed. R. Civ. P. 4(c)(3) and at the plaintiff's request, this Court may "order that service be made by a United States Marshal or deputy marshal or by a person specially appointed by the court."

Accordingly, **IT IS ORDERED** that the United States' Motion for Warning Order Attorney [DE 7] is **DENIED** without prejudice to its refiling should it become necessary.

This the 6th day of December, 2010.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge