

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|--------------------------|---|---------------------------|
| EDDIE SMITH, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 4:16-CV-1917 RLW |
| |) | |
| BANK OF AMERICA, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter is before the Court upon Plaintiff’s Motion to Waiver Service of a Complaint (ECF No. 29). Plaintiff states that in his Motion that he requests “entry of a judgment by default against the defendant [Harry Hilburg].” Plaintiff also, however, includes a self-produced Waiver of the Service of Summons. (ECF No. 29-1). From the record, it is unclear if Plaintiff has effectuated service on defendant Hilburg. Plaintiff is responsible for serving each defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure. Listed below are two options for service of process. Plaintiff must follow one of these two options:

Option I: Plaintiff must serve the defendants with a summons. To do so, Plaintiff must submit to the Court for each defendant: i) a filed-stamped copy of his complaint; ii) two (2) completed summons forms (AO Form 440); and iii) two (2) completed “Notice of Intent to Use Private Process Server” forms. The “Notice of Intent to Use Private Process Server” form must include the name and address of the process server who will be effectuating service upon defendant Hilburg. Plaintiff must complete these forms and return them to the Clerk’s Office. Once Plaintiff submits these forms, the Clerk’s Office will sign and seal his summons and return them to him. The summons must then be served upon defendant Hilburg by a private process server, and return of service must be filed with the Court. Attached to this Order are the necessary forms for service of the complaint by summons. Or in the alternative,

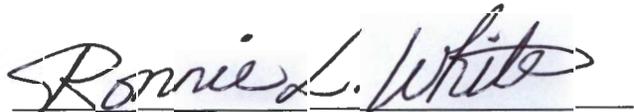
Option II: Plaintiff has the option of electing to serve defendant Hilburg with the Waiver of Service form pursuant to Federal Rule of Civil Procedure 4(d). If Plaintiff uses this option, he must fill out two (2) Waiver of Service forms and send them, along with a copy of the complaint and a self-addressed and stamped envelope to defendant Hilburg.¹ The Court will order the Clerk to forward these forms with the copy of this Order. If defendant Hilburg chooses not to waive service, Plaintiff will then need to use a private process server as described above in Option I.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Waiver Service of a Complaint (ECF No. 29) is **DENIED**. Plaintiff shall cause service to be effected upon defendant Hilburg **no later than 90 days from the date of the filing of the complaint**. In absence of good cause shown, failure to timely serve said defendant shall result in the dismissal of Plaintiff's claims as to said defendant without prejudice.

IT IS FURTHER ORDERED that the Clerk of Court shall forward to Plaintiff with a copy of this Order: i) a file-stamped copy of the complaint; ii) two (2) summons forms; iii) a "Notice of Intent to Use Private Process Server" form; and iv) two (2) Waiver of Service Forms.

Dated this 22nd day of March, 2017.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

¹If plaintiff chooses to serve defendant by waiver, he should file a notice with the Court informing the Court of his intention. Additionally, after defendant signs one copy of the waiver and returns it to Plaintiff, Plaintiff should file his copy of the signed waiver with the Court.