

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID A. SPENCER,

Plaintiff,

v.

No. 16cv841 MCA/KK

STATE OF NEW MEXICO, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant(s) “Contracted Medical Staff of the San Juan County Adult Detention Center’s” (“Medical Staff”) Motion and Supporting Memorandum to Quash Service of the Summons Naming “Contracted Medical Staff of the San Juan County Adult Detention Center,” and to Dismiss the Complaint, Doc. 30, filed May 8, 2017 (“Motion to Quash and Dismiss”). For the reasons stated below, the Court will **DENY** the Medical Staff’s Motion to Quash and Dismiss **as moot.**

Plaintiff filed his Amended Complaint on September 14, 2016. A summons was issued for the Medical Staff on April 10, 2017, and was left at the San Juan County Adult Detention Center on April 15, 2017, by an unknown person. *See* Doc. 30 at 1. The Medical Staff seek to quash service of the summons and to dismiss the Amended Complaint, because the summons was not accompanied by a copy of the Amended Complaint and was served seven months after the filing of the Amended Complaint.

Rule 4(c)(1) of the Federal Rules of Civil Procedure provides: “A summons must be served with a copy of the complaint. The 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.” *See 1 Moore’s Federal Practice* § 4.50[1] (2014) (“Service of a summons

without a complaint renders service of process invalid”) (citing cases from 2d, 5th, 9th and 11th Circuits). Plaintiff’s service of process on the Medical Staff was invalid because the summons was not accompanied by a copy of the Amended Complaint.

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915. See Mem. Op. and Order at 1-2, 7, Doc. 7, filed September 12, 2016. Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). Rule 4 provides that:

At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c)(3). The Court did not order service of Summons and Complaint on Defendants when it granted Plaintiff leave to proceed *in forma pauperis* and stated that “[t]he Court will order service if Plaintiff timely files an amended complaint which states a claim and includes the addresses of every defendant named in the amended complaint.” Doc. 7. If the Court determines, after its review pursuant to 28 U.S.C. § 1915(e)(2), that the Amended Complaint states a claim against the Medical Staff, the Court will order service of summons and Amended Complaint on the Medical Staff.

The Court will deny the Medical Staff’s Motion to Quash and Dismiss as moot because the Court has not yet ordered service of summons and Amended Complaint on the Medical Staff.

IT IS ORDERED that Defendant(s) “Contracted Medical Staff of the San Juan County Adult Detention Center’s” Motion and Supporting Memorandum to Quash Service of the

Summons Naming “Contracted Medical Staff of the San Juan County Adult Detention Center,”
and to Dismiss the Complaint, Doc. 30, filed May 8, 2017, is **DENIED as moot.**

A handwritten signature in black ink, appearing to read "M. Christina Armiño", is written over a horizontal line.

M. CHRISTINA ARMIÑO
CHIEF UNITED STATES DISTRICT JUDGE