

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES NELSON,

Plaintiff,

Case # 16-CV-6104-FPG

v.

DECISION AND ORDER

CITY OF ROCHESTER, MONROE COUNTY,
SANDRA DOORLEY, ROBERT J. BURNS,

Defendants.

On January 28, 2016, James Nelson initiated this action in the Supreme Court of the State of New York, County of Monroe by filing a Summons with Notice pursuant to N.Y. C.P.L.R. 305(b) (MCKINNEY 2017). ECF No. 1-2. Nelson served that Summons with Notice upon Monroe County, Monroe County District Attorney Sandra Doorley, and Monroe County Probation Administrator Robert Burns (“County Defendants”) on February 2, 2016. *See* ECF No. 1. In response, the County Defendants served Nelson with a Notice of Appearance and Demand for Complaint on February 19, 2016. ECF No. 1-3. On February 22, 2016, the County Defendants removed the matter to this Court. ECF No. 1.

On December 28, 2016, because Nelson had not filed or served a complaint, the County Defendants moved to dismiss the action against them pursuant to Federal Rules of Civil Procedure 4(m), 12(b)(5), and 41(b). ECF No. 5. On June 20, 2017, Nelson had still not filed or served a complaint. Accordingly, the Court granted the County Defendants’ Motion to Dismiss. *See* ECF No. 8. The Court also ordered Nelson to show cause why the claims against the City of Rochester should not be dismissed. *See id.* Despite the Court’s Order, Nelson did not show cause why his claims should not be dismissed. Further, Nelson has yet to file or serve a complaint.

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” By Order to Show Cause dated June 20, 2017, this Court directed the Plaintiff to show cause, “in writing and before July 3, 2017, why this case should not be dismissed under Fed. R. Civ. P. 4(m) for failure to effect service within 90 days.” ECF No. 8. The Order to Show Cause warned the Plaintiff that “Failure to comply with this Order will result in the dismissal of this action.” *Id.*


Nelson has failed to serve the Complaint within the required timeframe. There is no indication that the Nelson has been diligent in his efforts to effect service in a timely manner. Despite being ordered to show cause why this case should not be dismissed for failing to serve the Complaint, Nelson has ignored the Court’s Order, and has provided no explanation or reason to demonstrate that dismissal of this action is not appropriate. As a result, this case will be dismissed.

CONCLUSION

For the foregoing reasons, this case is dismissed pursuant to Fed. R. Civ. P. 4(m), and the Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: July 18, 2017
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court