

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 RACHEL WHITTLESEY,

11 Plaintiff,

12 v.

13 UNITED STATES DEPARTMENT OF  
14 THE TREASURY,

15 Defendant.

16 CASE NO. C17-5362RBL

17 ORDER TO SHOW CAUSE

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THIS MATTER is before the Court on its own motion. Plaintiff Wittlesey filed this  
action on May 16, 2017. She initially sought *in forma pauperis* status but paid the filing fee the  
same day. She also sought the appointment of counsel, which was denied [Dkt. # 8]. In the  
meantime, Plaintiff filed a summons with the court, but it does not indicate that it or the  
complaint were served on the defendant. Indeed, there is no proof of service in the file.

Under the Federal Rules of Civil Procedure, a plaintiff must serve her complaint on the  
defendant within 90 days of filing it in court:

**(m) Time Limit for Service.** If 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. But if the plaintiff shows good cause for the failure, the court  
must extend the time for service for an appropriate period.

1 The Advisory Committee Notes to this Rule reiterate that the 90 day requirement is to be applied  
2 flexibly, and should not be applied where doing so would cause prejudice:

3 [Rule 4(m)] explicitly provides that the court shall allow additional time if there is good  
4 cause for the plaintiff's failure to effect service in the prescribed [90] days, and  
5 authorizes the court to relieve a plaintiff of the consequences of an application of this  
6 subdivision even if there is no good cause shown..

7 (Time period reflects 2015 rule change). *See also*, for example, *In re Sheehan*, 253 F.3d 507, 512  
8 (9<sup>th</sup> Cir. 2001) (Upon a showing of good cause, the Court must extend the period; and even  
9 absent a showing of good cause, the court has discretion to extend the period). The period for  
10 service has expired.

11 Plaintiff Whittlesey is therefore **ORDERED to SHOW CAUSE in writing within 10**  
12 **days** why she has not affected proper service on the defendant under the Rules, and to  
13 demonstrate why the Court should in any event extend the period for service. If she does not do  
14 so this matter will be dismissed.

15 IT IS SO ORDERED.

16 Dated this 4<sup>th</sup> day of October, 2017.

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18 Ronald B. Leighton

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20 United States District Judge