

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.: 19-8195

ALENS CHARLES

Petitioner,

v.

RIC BRADSHAW, PALM BEACH COUNTY SHERIFF

Respondent.

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

APPENDIX TO
BRIEF OF RESPONDENT IN
OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI

Respectfully submitted,
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Counsel for Respondent

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via email and US Mail to Alens Charles (youngking0403@gmail.com), 4070 Arthurium Avenue, Lake Worth, Florida 33462 this 14th day of May, 2020.

s/ Carri S. Leininger, Esq.

Carri S. Leininger, Esq. (eService@wlclaw.com)

Florida Bar No. 0861022

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**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

No. 18-13350

District Court Docket No.
9:17-cv-80861-DMM

ALENS CHARLES,

Plaintiff - Appellant,

versus

RIC L. BRADSHAW,
as Sheriff of Palm Beach County Sheriff's Office,

Defendant - Appellee.

Appeal from the United States District Court for the
Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 01, 2019
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-80861-CV-MIDDLEBROOKS

ALENS CHARLES,

Plaintiff,

v.

RIC L. BRADSHAW, *as Sheriff*
of Palm Beach County Sheriff's
Office,

Defendant.

_____ /

ORDER OF INSTRUCTIONS TO *PRO SE* LITIGANT

THIS CAUSE is before the Court following the Court's grant of Plaintiff Alens Charles' ("Plaintiff") Motion to Amend/Correct Relief Amount. Plaintiff is proceeding *pro se* in this case. So that Plaintiff is advised of essential requirements concerning this case, the Court **ORDERS** as follows:

1. Any litigant appearing *pro se* is responsible for keeping the Court advised of his or his current address at all times. If a *pro se* litigant's address changes and no change of address is promptly filed with the Clerk of Court, the litigant risks dismissal of his case.
2. Plaintiff must obtain a summons from the Clerk of Court and serve it, along with a copy of the Complaint, on Defendant within 90 days of the Complaint's filing and in the manner prescribed by Rule 4 of the Federal Rules of Civil Procedure.
3. Plaintiff shall serve upon Defendant, and Defendant upon Plaintiff, or, if appearance by counsel has been entered, upon their respective counsels, copies of all further pleadings or documents submitted for the Court's consideration. All pleadings must include the case number at the top of the first page. *Pro se* litigants shall send the original of every pleading or document to the Clerk of this Court. Each submission shall include:


- 1) a copy of the pleading or document, and

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- 2) a certificate of service stating the date a true copy of the pleading or document was sent to the opposing parties or counsel for such parties. No original pleading or document shall be sent directly to a Judge of this Court. Any paper submitted directly to a Judge rather than to the Clerk will be disregarded by the Court.
3. Plaintiff does not have counsel to assist in the discovery process. Attention is therefore directed to Federal Rule of Civil Procedure 26(a), which lists the various forms of discovery available in civil cases. *Pro se* litigants are instructed that the Court will permit reasonable, relevant discovery by the methods described in the Federal Rules of Civil Procedure. *Pro se* litigants are responsible for actively pursuing this case, obtaining essential discovery, filing all necessary pleadings and motions, and otherwise complying with all scheduling orders and preparing the case for trial.
4. *Pro se* litigants, like all other litigants, must adhere to the Federal Rules of Civil Procedure and the Local Rules of the Southern District of Florida.
5. To file a document with the Clerk of Court, Plaintiff may mail his filings to:

The Clerk of Court
Paul G. Rogers Federal Building and U.S. Courthouse
701 Clematis Street Room 202
West Palm Beach, FL 33401

DONE AND ORDERED in Chambers, at West Palm Beach, Florida, this 7th day of August, 2017.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record;
Alens Charles, *pro se*
4070 Arthurium Avenue
Lake Worth, FL 33462

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-80861-CV-MIDDLEBROOKS/BRANNON

ALENS CHARLES,

Plaintiff,

v.

RIC L. BRADSHAW, as Sheriff of Palm
Beach County Sheriff's Office,

Defendant. /

ORDER SETTING DEADLINE FOR SERVICE

On July 20, 2017, Plaintiff Alens Charles filed a Complaint against Defendant Ric L. Bradshaw. (DE 1). On August 7, 2017, this Court granted Plaintiff's Motion to Amend the Complaint (DE 7), and Plaintiff subsequently filed his Amended Complaint on August 28, 2017 (DE 9).

Federal Rule of Civil Procedure Rule 4(b) requires that a plaintiff must present a summons to the Clerk for a signature and seal. Fed. R. Civ. P. 4(b). If the summons is properly completed, the Clerk must sign and seal it and issue it to the plaintiff. Fed. R. Civ. P. 4(b). Rule 4(a) sets out the required contents for a summons. Fed. R. Civ. P. 4(a). The summons must then be served on each defendant along with a copy of the complaint. Fed. R. Civ. P. 4(c)(1). Rule 4(m) sets forth the deadline for serving a defendant:

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.

Fed. R. Civ. P. 4(m). The ninety (90) days with which to serve a defendant begins with the filing of the original complaint. *Cf. Lindley v. City of Birmingham*, 452 F. App'x 878, 880 (11th Cir.

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2011) (concluding that when amended complaint names new defendant(s), Rule 4(m) period to serve new defendant(s) starts from filing of amended, not original, complaint).

Here, the Clerk of Court has not issued a summons to Plaintiff, and there is no record of Plaintiff having served a summons and copy of the Amended Complaint on Defendant. Upon review of the Complaint (DE 1) and the Amended Complaint (DE 9), it appears that Plaintiff has not added any new defendants or new claims, but supplemented his factual allegations and relief requested. Plaintiff is required to serve a summons and copy of the Amended Complaint on Defendant within ninety (90) days of July 20, 2017, the date of filing of the original Complaint, which is October 18, 2017.

Accordingly, it his hereby

ORDERED AND ADJUDGED that

- (1) Plaintiff must serve a summons and copy of the Amended Complaint on Defendant pursuant to Fed. R. Civ. P. 4 by **October 18, 2017**.
- (2) Plaintiff must file proof of service of process on Defendant by October 18, 2017 with the Court by **October 25, 2017**.
- (3) Failure to comply with this Order will result in the dismissal of this action.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 5th day of October, 2017.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Alens Charles, *Pro Se*
4070 Arthurium Avenue
Lake Worth, FL 33462

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-80861-CV-MIDDLEBROOKS/BRANNON

ALENS CHARLES,

Plaintiff,

v.

**RIC L. BRADSHAW, as Sheriff of Palm
Beach County Sheriff's Office,**

Defendant. _____/

ORDER REQUIRING PROOF OF SERVICE

On October 5, 2017, this Court ordered Plaintiff Alens Charles ("Plaintiff") to serve a summons and copy of the Amended Complaint (DE 9) on Defendant Ric L. Bradshaw ("Defendant") by October 18, 2017. (DE 10). The Order also required Plaintiff to file proof with this Court that he served Defendant with a summons and copy of the Amended Complaint by October 25, 2017. (DE 10).

Based on Federal Rule of Civil Procedure 4(m), a plaintiff must serve a summons and copy of the complaint on a Defendant within ninety (90) days of filing the Complaint, which, in this case, required Plaintiff to serve a summons and copy of the Amended Complaint on Defendant by October 18, 2017. If a Plaintiff does not comply, "a court must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m).

On October 11, 2017, the Clerk issued a summons as to Defendant. (DE 11). Plaintiff has not filed anything with this Court to show that Plaintiff served Defendant with a summons and a copy of the Amended Complaint by October 18, 2017. Accordingly, it is hereby

ORDERED AND ADJUDGED that

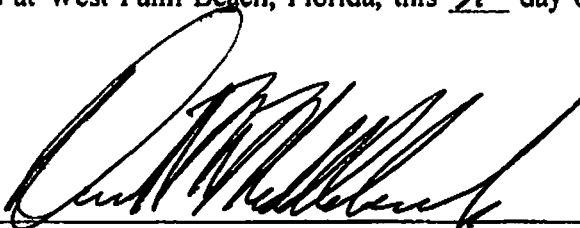
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(1) By **November 10, 2017**, Plaintiff must either:

- a. **FILE** proof with this Court that Defendant was served with a summons and copy of the Amended Complaint by October 18, 2017, **OR**
- b. Show **GOOD CAUSE** for failing to serve Defendant with a summons and copy of the Amended Complaint by October 18, 2017 and why the deadline to serve Defendant with these documents should be extended.

(2) Failure to comply with this Order will result in the dismissal of this action without prejudice.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 31 day of October, 2017.


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Alens Charles, *Pro Se*
4070 Arthurium Avenue
Lake Worth, FL 33462

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-80861-CV-MIDDLEBROOKS/BRANNON

ALENS CHARLES,

Plaintiff,

v.

**RIC L. BRADSHAW, as Sheriff of Palm
Beach County Sheriff's Office,**

Defendant. /

ORDER REQUIRING PROOF OF SERVICE

THIS CAUSE comes before the Court on Plaintiff Alens Charles' ("Plaintiff") Letter to the Court ("Letter"), filed on November 22, 2017. (DE 13). In the Letter, Plaintiff states that he is waiting for a response from Defendant to his Amended Complaint (DE 9) and implies that he served a "notice" about this suit on Defendant. (DE 13). Plaintiff, proceeding *pro se*, also asks the Court, "Am I doing the right thing" with regards to how to properly institute a suit.

This is the third and final time that the Court will instruct Plaintiff how to show the Court that process was served on Defendant. First, on October 5, 2017, this Court ordered Plaintiff Alens Charles ("Plaintiff") to serve a summons and copy of the Amended Complaint (DE 9) on Defendant Ric L. Bradshaw ("Defendant") by October 18, 2017. (DE 10). The Order also required Plaintiff to file proof with this Court that he served Defendant with a summons and copy of the Amended Complaint by October 25, 2017. (DE 10). In response, the Clerk of Court issued a summons as to Defendant on October 11, 2017 (DE 11), but Plaintiff did not provide proof of service on Defendant by the Court-ordered deadlines. On November 1, 2017, the Court gave Plaintiff another opportunity to file proof with the Court, by November 10, 2017, that Plaintiff served Defendant with the summons and a copy of the Amended Complaint. (DE 12).

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Plaintiff again did not comply with the Court-ordered deadline to file proof of service of process on Defendant, and instead filed the Letter on November 22, 2017.

As discussed in earlier Orders, a plaintiff must serve a summons and copy of the complaint on a defendant within ninety (90) days of filing the Complaint. Fed. R. Civ. P. 4(m). Here, Plaintiff was required to serve a summons and copy of the Amended Complaint on Defendant by October 18, 2017. If a plaintiff does not timely serve those documents on a defendant, "a court must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m).

By December 18, 2017, Plaintiff must file proof with the Court that he served Defendant with the summons and a copy of the Amended Complaint. To do so, Plaintiff must file with the Court a "Return of Service" Affidavit. In the Affidavit, the person who signs it cannot be the Plaintiff, and that person must state (1) who they gave the summons and Amended Complaint to, (2) how they gave the documents to Defendant, and (3) the date and time that they served those documents on Defendant. See Fed. R. Civ. P. 4(c). Absent intervening circumstances, if Plaintiff does not provide proof to the Court by December 18, 2017 that Defendant was served the summons and a copy of the Amended Complaint, Plaintiff's Complaint will be dismissed pursuant to Federal Rule of Civil Procedure 4(m). Accordingly, it is hereby

ORDERED AND ADJUDGED that

(1) By December 18, 2017, Plaintiff must either:

a. **FILE** proof with this Court, though a "Return of Service" Affidavit, that Defendant was served with a summons and copy of the Amended Complaint,

OR

b. Show **GOOD CAUSE** for failing to serve Defendant with a summons and copy of the Amended Complaint and why the deadline to serve Defendant with these documents should be extended.

(2) Failure to comply with this Order will result in the dismissal of this action without prejudice.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 4 day of December, 2017.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Alens Charles, *Pro Se*
4070 Arthurium Avenue
Lake Worth, FL 33462