



**IT IS ORDERED as set forth below:**

**Date: September 14, 2015**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	:	BANKRUPTCY CASE NO:
	:	
<b>CAR'MI WILLIAMS,</b>	:	<b>14-70375-MGD</b>
	:	
Debtor.	:	CHAPTER 7
	:	
<hr/>		
<b>CAR'MI WILLIAMS,</b>	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING NO:
	:	
v.	:	<b>15-5055</b>
	:	
<b>U.S. DEPARTMENT OF EDUCATION/NELNET</b>	:	
	:	
Defendant.	:	
	:	

**ORDER GRANTING UNITED STATES' MOTION TO DISMISS**

After the Court denied the United States' Motion to Dismiss for insufficient service of process, it granted Plaintiff 30 days to obtain an alias summons and properly serve it. The United States has renewed its motion (Doc. 12) asserting Plaintiff failed to do so. The Court agrees.

## **I. Background**

This case concerns the determination of dischargeability of student loans Plaintiff Car’Mi Williams owes the U.S. Department of Education. Plaintiff filed the Complaint on January 20, 2015 (Doc. 1). Plaintiff filed a Certificate of Service of Summons and Complaint the same day that indicated service by mail on Nelnet, the servicer of Plaintiff’s student loan. (Doc. 3). The United States filed its first Motion to Dismiss on March 3, 2015, asserting insufficient service of process under Federal Rules of Bankruptcy Procedure 7004(b)(4) (Doc. 4). The Court entered an order on May 12, 2015, agreeing that service of process was insufficient under Federal Rule of Bankruptcy Procedure 7004(b)(4) and (b)(5) “which require mailing a summons and complaint to the civil process clerk at the office of the United States attorney for the district in which the action is brought, to the Attorney General of the United States in Washington, D.C., and to the affected officer or agency.” (Doc. 9 at 2). Nonetheless, the Court denied the motion and gave Plaintiff 30 days “to obtain an alias summons and serve same along with a copy of her complaint” as provided by that rule.

The deadline for Plaintiff to obtain an alias summons and serve it along with the complaint was June 11, 2015. The docket does not indicate that Plaintiff obtained an alias summons from the Clerk’s Office before that date. However, on June 9, 2015, Plaintiff filed a second Certificate of Service of Summons and Complaint attesting service on the U.S. Attorney’s Office for the Northern District of Georgia, the U.S. Attorney General’s Office, Nelnet, and the U.S. Bankruptcy Court. (Doc. 11). This second Certificate does not specify what exactly was served on these entities.

The United States renewed its Motion to Dismiss on July 30, 2015. (Doc. 12). No response was filed by August 17, 2015, accordingly the renewed Motion to Dismiss is deemed unopposed. BLR 7007-1(c), N.D. Ga; *see also* Fed. R. Bankr. P. 9006(a)(1)(C), (f).

## **II. Legal Standard**

“Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served.” *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir.1990). Service of process in adversary proceedings is governed by Federal Rule of Bankruptcy Procedure 7004. Federal Rule of Bankruptcy Procedure 7004(b)(4) and (b)(5) apply to service upon the United States, and require mailing a summons and complaint to the civil process clerk at the office of the United States attorney for the district in which the action is brought, to the Attorney General of the United States in Washington, D.C., and to the affected officer or agency. Federal Rule of Civil Procedure 12(b)(5), made applicable to this action by Federal Rule of Bankruptcy Procedure 7012(b), provides that the defense of insufficient service of process may be raised by motion. Determinations as to the dischargeability of debts are core proceedings under 28 U.S.C. § 157(b)(2)(I) and venue in this Court is proper under 28 U.S.C. § 1409(a).

## **III. Discussion**

Aside from the fact that Plaintiff failed to respond to the United States’ motion, which means the Court may grant it as unopposed, there are two primary issues with Plaintiff’s second Certificate of Service. First, it does not appear that Plaintiff obtained an alias summons for each Defendant. A summons is issued by the Clerk after the filing of the complaint, and a summons must be issued for each defendant to be served. Fed. R. Civ. P. 4(b). Under Federal Rule of Bankruptcy Procedure 7004(e), the summons must be mailed within 7 days after it is issued. If the summons is not served within this time, the Clerk may issue an “alias” summons to be mailed within that time. Consequently, Plaintiff needed to obtain alias summonses to serve out with the Complaint, as instructed by the Court’s May 12, 2015 Order.

Second, the second Certificate of Service does not evidence service on the United States

Department of Education, as required by Federal Rule of Bankruptcy Procedure 7004(b)(5). As the Court noted above, proper service is necessary for the Court to have jurisdiction and the service provisions for the United States, while perhaps complex, are not waivable. *Tuke v. United States*, 76 F.3d 155, 157 (7th Cir. 1996). The Court is not blind to the fact that bankruptcy law, including procedure, can often be very difficult to navigate for individuals acting without counsel. Regardless, pro se litigants must follow the rules governing service. *Broitman v. Kirkland (In re Kirkland)*, 86 F.3d 172, 176 (10th Cir. 1996).

Because Plaintiff has failed to cure the service defects as provided in the Court's prior Order, the Court finds it lacks jurisdiction over this action due to insufficiency of service. It must dismiss this adversary proceeding without prejudice. Fed. R. Civ. P. 41(b) (incorporated by Fed. R. Bankr. P. 7041); BLR 7004-1(b), N.D. Ga. Accordingly, it is

**ORDERED** that the United States' Motion to Dismiss for Failure to Comply with This Court's Order is **GRANTED**.

It is **FURTHER ORDERED** that this adversary proceeding is **DISMISSED WITHOUT PREJUDICE**.

The Clerk is directed to serve a copy of this Order upon Plaintiff, Defendant, and Counsel for Defendant.

**END OF DOCUMENT**