

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Maribel Roque v. William Bayne, et al.

Roque · No. 25-4097-TC-ADM · Decided March 30, 2026

SUMMARY

The magistrate judge recommends dismissal without prejudice of Maribel Roque’s claims under Federal Rule of Civil Procedure 4(m) because Roque did not properly serve the defendants within the required period. The court previously explained that service by certified mail conducted by Roque, a party to the action, was defective, and Roque did not respond to the order to show cause or establish good cause for the failure. The report advises that written objections may be filed within fourteen days.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Angel D. Mitchell
JURISDICTION	United States District Court for the District of Kansas
DECIDED	March 30, 2026
DOCKET	25-4097-TC-ADM
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation by a United States magistrate judge recommending dismissal without prejudice for failure to timely and properly serve the defendants.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 4(m), when a defendant is not served within 90 days after the complaint is filed, the court must dismiss without prejudice or order service within a specified time unless the plaintiff shows good cause, in which event the court must extend the service period.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- service of process
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff's personal mailing of the summonses and complaints by certified mail constituted valid service under Federal Rule of Civil Procedure 4(c)(2).
2. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 4(m) because defendants were not properly served within 90 days and plaintiff failed to show good cause for the failure.

HOLDINGS

1. A party to the action cannot effect service under Federal Rule of Civil Procedure 4(c)(2), including by mailing the summons and complaint to a defendant.
2. The magistrate judge recommended dismissal without prejudice under Rule 4(m) because Roque failed to serve the defendants within 90 days and failed to show good cause for the failure.

KEY QUOTATIONS

"The court informed Roque that, as a party to the case, he cannot effectuate service on any defendant, and that "[t]his prohibition extends to mailed service."" (at 1-2)

"IT IS THEREFORE RECOMMENDED that the district judge dismiss Roque's claims without prejudice." (at 3)

FACTUAL BACKGROUND

Roque attempted to serve the defendants by certified mail and personally dispatched the summonses and complaints. The court determined that these efforts did not satisfy Federal Rule of Civil Procedure 4(c)(2), which requires service by a person who is at least 18 years old and not a party. After receiving a show-cause order, Roque did not respond or establish good cause for the failure to complete timely and proper service.

PROCEDURAL HISTORY

The court previously issued a notice and order to show cause after determining that plaintiff's certified-mail attempts at service were defective because plaintiff personally mailed the summonses and complaints. Plaintiff did not respond to the show-cause order or demonstrate good cause for failing to complete service within Rule 4(m)'s 90-day period. The magistrate judge therefore recommended that the district judge dismiss the claims without prejudice.

DISPOSITION

other

CASES CITED

- In re Key Energy Res. Inc., 230 F.3d 1197, 1199-1200 (10th Cir. 2000)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS MARIBEL ROQUE,)) Plaintiff,)) v.) Case No. 25-4097-TC-ADM) WILLIAM BAYNE, et al.,)) Defendants.) REPORT AND RECOMMENDATION On March 4, 2026, the court issued a Notice and Order to Show Cause to pro se plaintiff Maribel Roque, noting that there was no indication on the record that Roque had effected proper service on any defendant, and that the time permitted by Federal Rule of Civil Procedure 4(m) for so doing had expired.

(ECF 24.) The court recognized that Roque had attempted to serve some defendants by certified mail, but explained that such attempted service was defective because Rule 4(c) requires service by a person who is not a party.

The court informed Roque that, as a party to the case, he cannot effectuate service on any defendant, and that “[t]his prohibition extends to mailed service.” (Id. 1-2). Going further, the court explained, Here, the docket reflects that Roque himself dispatched the summonses and complaints to defendants via certified mail. Each “proof of service” Roque filed indicates that he mailed the summonses himself, instead of a private process server or someone who meets Rule 4’s requirements to be a process server (i.e., someone who is at least 18 and not a party).

(ECF 19-21.) This does not satisfy Rule 4(c)(2)’s requirements. (Id. at 2.) The court then noted that Rule 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.

But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” So the court set a deadline of March 20 for Roque “to show good cause in writing... why service of the summons and complaint was not made in this case upon each of the defendants within 90 days from the filing of the complaint and thus why the undersigned should not recommend that Roque’s claims against them be dismissed without prejudice pursuant to Rule 4(m).” (Id. at 3.)

Roque has not filed a response to the March 4 show-cause order, nor in any other way demonstrated good cause for failure to effectuate timely, proper service on defendants. Although Roque filed an application for clerk’s entry of default on March 13 in which he asserted he “has shown due diligence in serving all defendants,” the certified mail receipts he attached to his application to support this assertion are the same certified mail receipts that the court analyzed in the show-cause order and deemed insufficient to effect service.

Thus, as the court already explained to Roque and as things still stand, he has neither corrected the service deficiencies the court previously identified nor responded to the court’s order directing him to show good cause why he has not perfected service such that his claims should not be dismissed.

Accordingly, the court now recommends that the district judge dismiss this case without prejudice pursuant to Rule 4(m). Roque may file specific written objections to this Report and Recommendation within fourteen days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); D. KAN. RULE 72.1.4(b). If Roque fails to file objections within the fourteen-day time period, no appellate review of the factual and legal determinations in this Report and Recommendation will be allowed by any court.

See *In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199-1200 (10th Cir. 2000). IT IS THEREFORE RECOMMENDED that the district judge dismiss Roque's claims without prejudice. The Clerk is directed to mail a copy of this Report and Recommendation to Roque by certified mail. Dated March 30, 2026, at Kansas City, Kansas. s/ Angel D. Mitchell Angel D. Mitchell U.S. Magistrate Judge