



# Arkansas Association of Defense Counsel

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## **YOU'VE BEEN SERVED (OR NOT): DOES FAILING TO LIST A NATURAL PERSON ON A SUMMONS TO A CORPORATION RENDER IT DEFECTIVE?**

It's Monday morning and a new Federal Court Summons and Complaint slides across your desk asserting various legal claims against a corporate entity, Big Baller Brand, Inc. (who, for the purposes of this article, is an Arkansas corporation). The Summons states:

### **SUMMONS IN A CIVIL ACTION**

To: Big Baller Brand  
200 River Market Ave., Suite 200  
Little Rock, AR 72201

After a cursory glance, there appears to be an issue with the Summons but you can't quite put your finger on it. An Answer is timely filed preserving all affirmative defenses, in particular service defenses. A proof of service is subsequently filed and attached to same is a certified mail receipt, restricted delivery, which is signed by the registered agent for Big Baller Brand, Inc., Mr. LaVar Ball (who, for the purposes of this article, is an Arkansas resident). Mr. Ball is adamant Big Baller Brand Inc., is not liable for any of the legal claims asserted against it as you are forced to listen to his diatribe about how it's perfectly reasonable to sell basketball sneakers for \$495 per pair. After an exhausting two hours of Mr. Ball venting and screaming his frustrations, he wants you to get the case dismissed. The questions is, can you?

There are two issues with the above Summons and the question becomes

whether either of them are grounds for dismissal of the Complaint for insufficiency of process pursuant to Rule 12(b)(4)? The first issue is Plaintiff failed to include the word "Inc." in the Summons. The second issue is Plaintiff failed to include Big Baller Brand, Inc.'s registered agent in the addressee portion of the Summons. Based on a 2014 Order prepared by Judge Susan Hickey in *Parham v. Acadia Healthcare of Tenn.*, 2014 U.S. Dist. LEXIS 1046477, the better and more successful argument is to attack the defective Summons for failing to list a natural person or registered agent on the Summons.

In *Acadia Healthcare of Tenn, supra*, Plaintiffs filed suit against "Acadia Healthcare of Tennessee" and attempted to serve a Summons addressed to "Acadia Healthcare TN" via certified mail on July 24, 2012. The Summons and Amended Complaint were received by Gail Trudell, who signed the return receipt and checked a box indicating she was an "agent" of the addressee. Plaintiffs subsequently filed a Motion for Default Judgment when Acadia failed to timely file an Answer. Acadia then filed a Response in opposition to the Motion for Default asserting two separate arguments: (1) the Summons was deficient because it was addressed to "Acadia Healthcare of Tennessee," a non-existent entity, rather than Acadia Healthcare Company, Inc., and (2) even if Plaintiffs had named the correct Defendant, service was deficient because Plaintiffs did not address the Summons to a natural person. The Court agreed with the latter argument and held service was insufficient because Plaintiffs addressed the service papers to

“Acadia Healthcare TN” rather than a natural person.

In finding the Summons defective, the Court discussed Rule 4 of the Federal Rules of Civil Procedure and Arkansas common law. Rule 4(h) requires a corporation to be served either in a manner prescribed for personal service of an individual under Rule 4(e)(1) (“following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made’); or by “delivering” a copy of the Summons and Complaint “to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.” Fed. R. Civ. P. 4(h). It is well settled that the use of certified mail is not sufficient to constitute “delivering” under Rule 4(h)(2). *Larsen v. Mayo Med. Ctr.*, 218 F.3d 863, 868 (8th Cir. 2000). Accordingly, Rule 4(h)(2) requires *personal* delivery rather than *mail* delivery. Thus, applying Rule 4(h)(2) to the facts surrounding service upon Big Baller Brand, Inc., Plaintiff’s attempt of service by certified mail did not satisfy the requirements for serving a corporation pursuant to the Rule.

As the Plaintiffs in *Acadia Healthcare of Tenn, supra*, failed to properly serve Acadia in accord with Rule 4(h)(2), they argued service was proper pursuant to Rule 4(e)(1) (i.e. service was proper under Arkansas or Tennessee law). The Court also rejected this argument as both Arkansas and Tennessee law required the Summons and Complaint be addressed to a specified natural person. See Ark. R. Civ. P. 4(d)(8)(A)(i); Tenn. R. Civ. P. 4.04(10). As Plaintiffs service papers were not addressed to a natural person, their attempt at service on “Acadia Healthcare of Tennessee” and/or “Acadia Healthcare Company, Inc.”

was ineffective. In reaching this conclusion, the Court relied on two Arkansas cases in support of its decision. See *Broadway v. Adidas Am., Inc.*, 3:07CV000149, 2008 U.S. Dist. LEXIS 54830, 2008 (E.D. Ark. July 10, 2008)(“[T]his attempt at service was defective because . . . service papers enclosed therewith were not addressed to an addressee or agent of the addressee that is a natural person. The requirements under Ark. R. Civ. P. 4, being in derogation of common law, must be strictly followed . . . .”); *Grand Slam Stores, L.L.C. v. L & P Builders, Inc.*, 92 Ark App. 210, 213, 212 S.W.3d 6, 8 (Ark. App. 2005)(“[Plaintiff] stated that Grand Slam was served via certified letter . . . and the letter was addressed to Grand Slam Stores LLC.’ We hold that this does not comply with our service of process requirements under Ark. R. Civ. P. 4(d)(8), which requires that an addressee be a ‘natural person specified by name.’ A ‘natural person’ is a ‘human being.’”). After holding service upon Acadia was improper due to the defective Summons, the Court in *Acadia Healthcare of Tenn, supra*, dismissed Plaintiff’s Complaint without prejudice pursuant to Rule 4(m).

It should be noted Rule 4(m) affords the Court discretion to “order that service be made within a specified time,” or extend the time for service for an appropriate period if the Plaintiff “shows good cause for failure” to properly perfect service within 90 days after the Complaint is filed. *Id.* Thus, in all likelihood, the end result will either be the Court allowing Plaintiff an extension to properly perfect service or dismissing the Complaint without prejudice, either of which would be nondispositive. However, should there be a statute of limitations issue, or the Complaint had already been dismissed

once in a previous lawsuit, then failing to list a natural person on the Summons could be a fatal defect, much to the delight of Mr. Ball, or whoever your (real) client may be.

The AADC wishes to thank  
Nicholas D. Hornung of Watts,  
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article.



We welcome your articles and  
thoughts for future editions.

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