

IN THE UNITED STATES FEDERAL COURT

Case No.

Plaintiff(s)

v.

Defendant(s)

**MOTION TO DISMISS ALIAS AND OTHER DEFENDANTS WHO
HAD NOT BEEN SERVED WITH SUMMONS AND COMPLAINT**

CASE NOW Defendants, who move the dismiss alias and other defendants who had not been served with summons and complaint.

The Defendants certify that, pursuant to D.C. Flo. L. Civ. R. 4. counsel discussed the grounds for this motion and the relief requested with counsel for the Plaintiff. As per R. 4 (2), any person who is at least 18 years old and not a party may serve a summons and complaint.

FACTS

The Complaint alleges a cause of action that the defendant was not served with the summons and complaint which arose the motion to dismiss alias and other defendants.

ARGUMENT

The movant prays under Fed. R. Civ. P.12(b)(5), insufficient service of process, and Fed. R. Civ. P. 4(m), untimely service of process, to dismiss the defendants who were not served with the summons.

The complaint can be refiled so long as the statute of limitations has not run. A problem arises, however, if the complaint is not served within the statutory period and the statute of limitations subsequently runs. In this scenario, any such dismissal is very prejudicial to both the attorney and his or her client and the lawyer is subject to a malpractice action.

Precedent

The Florida Supreme Court in *Morales* held that Rule 1.070(j) should be treated more strictly than the default rule. The Supreme Court held that the plaintiff's attorney, unlike in the default judgment rule, could not cure the problem by the perfection of service before the order of dismissal.

Plaintiffs need to make some real effort toward service, not half-hearted as in *Morales*, to effect service within 120 days from the filing of the complaint, to show "good cause." The purpose of the rule is to prevent a plaintiff from filing a suit and then taking no action whatsoever to proceed with the claim.

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Dismiss should be granted and relief to the plaintiff should be dismissed.

Dated: _____

Respectfully Submitted: _____