IT IS SO ORDERED.

Dated: January 27, 2026

Tyson A. Crist
United States Bankruptcy Judge

[INTENDED FOR PUBLICATION]

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
Sara L. Long,	:	Case No. 24-31855
	:	Chapter 13
	:	Judge Crist
Debtor.	:	
Jennifer Hursey,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 25-03002
Sara L. Long,	:	
Defendant.	:	

OPINION AND ORDER: (I) DENYING DEFENDANT'S [AMENDED] MOTION TO DISMISS COMPLAINT FOR FAILURE OF SERVICE (DOC. 6); (II) DENYING PLAINTIFF'S MOTION TO STRIKE (DOC. 11); (III) GRANTING DEFENDANT'S FIRST MOTION TO EXTEND RESPONSE TIME (DOC. 15); AND (IV) *SUA SPONTE* EXTENDING THE TIME FOR PLAINTIFF TO SERVE PROCESS PURSUANT TO FED. R. CIV. P. 4(m)

I. Introduction

This Opinion and Order concerns whether this adversary proceeding should be dismissed under Federal Rule of Civil Procedure ("Civil Rule") 12(b)(5), made applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7012(b),[1] due to insufficient service of process. Perhaps there are two morals of the story of service of process in this adversary proceeding, which has languished for over a year now. First, service of process in bankruptcy court is often different than in district court or Ohio state court, given that service by first-class mail as a primary method is expressly permitted and frequently utilized. *See* Fed. R. Bankr. P. 7004(b).[2] And a debtor's attorney must also be properly served. Second, to borrow from an old saying, just because you can (utilize Ohio law certified mail service), doesn't mean you should (rely upon it as the sole means of service), for the reasons discussed herein.

Plaintiff's attempted service of a bankruptcy court summons and complaint by certified mail pursuant to Rule 4.1 of the Ohio Rules of Civil Procedure ("Ohio Civ. R."), which was allegedly returned unclaimed, followed by the attempted use of regular mail service pursuant to Ohio Civ. R. 4.6(D), three months later to serve a stale bankruptcy court summons, does not work. And the attempt to serve the only summons issued in this adversary proceeding (Doc. 2), issued on January 14, 2025, on the Defendant Debtor and the Debtor's attorney on June 3, 2025 (Doc. 3) also does not work. At that point the summons was 133 days stale, and a new summons would have had to be issued under Bankruptcy Rule 7004(e)(1); however, the 90-day service period under Civil Rule 4(m), made applicable to this adversary proceeding by Bankruptcy Rule 7004(a)(1), had also expired, 51 days prior on April 13, 2025. In addition, Plaintiff did not, within the 90-day period, attempt to serve the Debtor's attorney. As a result, service of process has been insufficient so far, notwithstanding that it appears Plaintiff's counsel began by attempting service upon the Defendant through certified mail service, which is a valid means recognized under Bankruptcy

[1] As will become important later in this Opinion and Order, Bankruptcy Rule 7012(a) does not incorporate by reference Civil Rule 12(a), which governs the time to serve responsive pleadings in civil actions in the United States district courts; rather, Bankruptcy Rule 7012(a) sets forth different rules concerning the time to serve answers in adversary proceedings. In short, as applicable to this and most adversary proceedings, "[a] defendant must serve an answer to a complaint within 30 days *after the summons was issued*, unless the court sets a different time." Fed. R. Bankr. P. 7012(a)(1) (emphasis added).

[2] The Bankruptcy Rules are prescribed by The Supreme Court of the United States pursuant to 28 U.S.C. § 2075, also known as the Bankruptcy Rules Enabling Act.

Rule 7004(a)(1), Civil Rule 4(e)(1), and Ohio Civ. R. 4.1(A)(1)(a), so long as a return receipt—a green card—was requested.

Nonetheless, after working through the factors set forth by the United States Court of Appeals for the Sixth Circuit in *United States v. Oakland Physicians Medical Center, LLC*, 44 F. 4th 565, 568 (6th Cir. 2022), the Court is inclined, even though Plaintiff did not ask for it, to grant Plaintiff thirty (30) more days to serve a newly issued summons and a copy of the complaint on both the Defendant and her attorneys,[3] such that there is an opportunity for this matter, of which Debtor and her attorney were surely aware, to proceed and to be determined on the merits.

For the reasons stated below, although service of process has been insufficient so far, the Court will deny Defendant's amended motion to dismiss this adversary at this time, will deny the motion to strike, will grant Defendant's first motion to extend response time, and will *sua sponte* grant Plaintiff leave under Civil Rule 4(m) for thirty (30) days following the entry of this Order to properly serve the Defendant in accordance with Bankruptcy Rule 7004, particularly subdivisions (b)(9)[4] and (g) thereof.

II. Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and Amended General Order 05-02 (Amended Standing Order of Reference) of the United States District Court for the Southern

[3] On July 5, 2025, Attorney Thomas G. Eagle filed a *Notice of Appearance as Counsel for Defendant Sara L. Long* (Doc. 4). In addition, Defendant, as Debtor in her chapter 13 case, No. 24-31855, is still represented by Attorney Brent Jarnicki.

[4] There appears to be some debate in the case law over whether service upon a debtor is appropriate under Bankruptcy Rule 7004(b)(1) in light of the specific provision for service upon a debtor in subdivision (b)(9). *See, e.g.*, *Smith v. Khalif* (*In re Khalif*), 308 B.R. 614, 620 (Bankr. N.D. Ga. 2004) (collecting cases) (cited in 10 Collier on Bankruptcy ¶ 7004.04, n.6 (Richard Levin & Henry J. Sommer eds., 16th ed. 2026). In many cases, this may be a distinction without a difference. But the question that arises in this case is whether a plaintiff can utilize Bankruptcy Rule 7004(b)(7) or Civil Rule 4(e)(1) when the defendant is the debtor. Subdivision (b)(9) of Bankruptcy Rule 7004 exists for the very purpose of providing plaintiffs with a straightforward and reliable means of serving a debtor, which avoids the issue of having to attempt to locate the debtor's current "dwelling or usual place of abode or where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). In this Court's view, Bankruptcy Rule 7004 does not require that one specific method be used in this situation given that subdivision (a)(1) makes Civil Rule 4(e) applicable in an adversary proceeding, and given that subdivision (b) states that "*in addition to* the methods of service authorized by Fed. R. Civ. P. 4(e)-(j)," the provisions of (b)(1) through (b)(10) apply such that "a copy of a summons and complaint *may* be served by first-class mail, postage prepaid, within the United States . . . ." (emphasis added.) Thus, nowhere do the provisions of Bankruptcy Rule 7004, applicable to this circumstance, state that the summons and complaint "shall" be delivered in a specific manner, in contrast to subdivisions (g) and (h), which provide, respectively, that the debtor's attorney "*must* be served by any means authorized by Fed. R. Civ. P. 5(b)" and (although inapplicable to this case) "[s]ervice on an insured depository institution . . . *shall* be made by certified mail addressed to an officer of the institution . . . ." (emphasis added).

District of Ohio entered pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and this Court has constitutional authority to enter a final judgment. *See, e.g.*, *Bavelis v. Doukas* (*In re Bavelis*), 453 B.R. 832, 844-45 (Bankr. S.D. Ohio 2011) (finding that the Court had jurisdiction over a similar motion to dismiss based on service deficiencies).

III. Background

A. Debtor's Chapter 13 Case

On September 26, 2024, the Debtor, Sara L. Long ("Ms. Long," "Debtor," and "Defendant" herein), filed a petition for bankruptcy relief under chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code."). No. 24-31855, Doc. 1 (the "Petition"). On January 13, 2025, the deadline under Bankruptcy Rule 4007(c),[5] Creditor Jennifer Hursey ("Ms. Hursey" and "Plaintiff"), by and through counsel, filed her *Complaint to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A) or (B), 11 U.S.C. § 523(a)(4), and 11 U.S.C. § 523(a)(6)* (the "Complaint"), docketed in both the chapter 13 case (Doc. 25) and the adversary proceeding (Doc 1). There has been no substantive activity on the docket of Ms. Long's chapter 13 case since the Complaint was filed. And on June 3, 2025, the chapter 13 case was transferred to the current Bankruptcy Judge.

B. Plaintiff's Adversary Proceeding to Determine Dischargeability of Debt, Service, and the Associated Motions, Responses and Replies

As noted above, this adversary proceeding was initiated by the filing of Ms. Hursey's Complaint on January 13, 2025. The next day, January 14, 2025, the only summons ever issued in this adversary (Doc. 2) (the "Summons")[6] was docketed. The next entry on the docket was made 140 days later on June 3, 2025, to note that, like the chapter 13 case, this adversary proceeding had been transferred to the current Bankruptcy Judge. This docket entry appears to have prompted action by Plaintiff's counsel given that the next day, June 4, 2025, the first Certificate of Service (Doc. 3) for the Summons (the "First Certificate of Service") was filed on the docket (with a signature date of June 3, 2025). However, the First Certificate of Service actually concerned

[5] The 60th day after the "first date set for the § 341(a) meeting of creditors" was actually Saturday, January 11, 2025; however, pursuant to Bankruptcy Rule 9006(a)(1)(C), the period ran until Monday, January 13, 2025.

[6] Although there is a subsequent "Summons(es) Issued and Served on Sara L. Long on 1/14/2025" on the docket (Doc. 3), filed by Plaintiff's counsel on June 4, 2025, that is actually a Certificate of Service for the same Summons.

Plaintiff's third and final effort to serve the Summons and Complaint. Specifically, the First Certificate of Service indicated that the Summons, issued on January 14, 2025, had been served by regular, first-class United States mail, postage fully pre-paid, to the Debtor, as Defendant, and to the Debtor's attorney in her chapter 13 case, on June 3, 2025. This is why the docket entry for the First Certificate of Service indicated that Defendant's answer was due on July 7, 2025, even though the answer period set through the language in the Summons,[7] pursuant to Bankruptcy Rule 7012(a), had expired long ago on February 13, 2025.

Within the time for Defendant to answer, at least according to the docket entry for the First Certificate of Service, Ms. Long, by and through counsel, filed *Defendant's Motion to Dismiss Complaint for Failure of Service and Memorandum in Support* (Doc. 5) on July 5, 2025. This was followed by an amended version of the Motion to Dismiss on July 11, 2025, which states it was "[Corrected for typo in Notice only]" (Doc. 6) (the "Amended Motion to Dismiss").[8]

On July 14, 2025, three days after the Amended Motion to Dismiss was filed, Plaintiff's counsel filed the second and third Certificates of Service (Docs. 7 and 8) of the Summons (the "Second Certificate of Service" and the "Third Certificate of Service"), reflecting attempts to serve the Summons and Complaint that occurred long before the June 3, 2025 service certified in the First Certificate of Service. The Second Certificate of Service declared that service of "this summons[9] and a copy of the complaint was made January 14, 2025 . . . pursuant to the laws of the State of Ohio – Certified Mail" upon Ms. Long at the address listed in her Petition. So, the service on January 14, 2025, certified in the Second Certificate of Service, took place 140 days before the service on June 3, 2025, certified in the First Certificate of Service. And the Third Certificate of Service declared that service of "this summons and a copy of the complaint was

[7] The Summons states that "YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of *issuance* of this summons" and that "[i]f you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012." Summons (Docs. 2 and 3) (italics added).

[8] A comparison of the Motion to Dismiss and Amended Motion to Dismiss reveals that on page 6 of the Amended Motion to Dismiss, which is the second page of the Notice of Motion to Dismiss Complaint for Failure of Service, the name of the party that Mr. Eagle, Defendant's counsel, represents in this adversary was corrected. There were no other (or substantive) changes to the Motion to Dismiss.

[9] The docket entry for the Second Certificate of Service, as well as the Third Certificate of Service, is related back to the Complaint (Doc. 1), not to any summons, but again, only the one Summons has ever been issued in this adversary proceeding.

made April 1, 2025 . . . pursuant to the laws of the State of Ohio – Regular Mail" upon Ms. Long, also at the address listed in her Petition. But no other information was provided, nor was there any explanation or evidence of what happened with the Ohio – Certified Mail service identified in the Second Certificate of Service. And there have been no further certificates of service, declarations, or affidavits presented with regard to Plaintiff's service of the Summons and Complaint, only counsel's representations in the papers described below.

On July 28, 2025,[10] Ms. Hursey, by and through counsel, filed *Plaintiff's Response in Opposition to Defendant's Amended Motion to Dismiss for Failure of Service and Memorandum in Support (Doc. No. 6)* (the "Response") (Doc. 9). Therein, counsel asserts that service was issued on January 14, 2025, within seven (7) days in compliance with Bankruptcy Rule 7004(e)(1), by certified mail "in accordance with Fed. R. Civ. P. 4(e)(1), Fed. [R.] Bank[r]. P. 7004(a)(3),[11] and Ohio Civ. P. R. 4(A)(1)[,]"[12] as supported by the Second Certificate of Service (Doc. 7) signed and filed on July 14, 2025. Resp. at 2, ¶ 2. Neither the Response nor the Second Certificate of Service indicate whether Plaintiff requested a return receipt when sending the certified mail service, as required by Ohio law.[13] *See* Ohio R. Civ. P. 4.1(A)(1)(a). Counsel further asserts that "[w]hen service was returned as unclaimed by the United States Post Office, Ms. Hursey's counsel issued service of the Summons and Complaint by regular, first-class mail on April 1, 2025 to Ms. Long at her personal residence in accordance with Fed. R. Civ. P. 4(e)(1), Fed. [R.] Bank[r]. P. 7004(a)(3), and Ohio Civ. P. R. 4.6(D)[,]" as supported by the Third Certificate of Service (Doc. 8), also signed and filed on July 14, 2025. Resp. at 2, ¶ 3. Counsel also asserts that they "sent the Summons and Complaint by first-class mail to [Debtor's attorney,] Mr. Jarnicki[,] in accordance with Bankruptcy Rule 7004(b)(9) and (g)[;]" however, counsel does not say in the Response when that mailing was done and according to the three Certificates of Service filed with this Court, service to Mr. Jarnicki was only mailed once, on June 3, 2025, by regular, first class United States mail. *See* First Cert. of Serv. (Doc. 3). Counsel also asserts that "[a]t the same time and although

[10] The Response was filed seventeen (17) days after the Amended Motion to Dismiss was filed, and twenty-three (23) days after the Motion to Dismiss was filed.

[11] This provision concerns "personally serv[ing] a summons and complaint under Fed. R. Civ. P. 4(e)-(j)."

[12] Ohio Rule of Civil Procedure 4(A) concerns issuance of a summons by the clerk of an Ohio state court.

[13] This is in contrast to Bankruptcy Rule 7004(h), which does not require a return receipt—a "green card."

not required to perfect service upon Ms. Long," counsel "also served Ms. Long at her personal residence by first-class mail with the correspondence to Mr. Jarnicki enclosing the Summons and Complaint." Resp. at 2, ¶ 4 (citing the First Certificate of Service (Doc. 2)). So, the "same time" has to mean June 3, 2025, which is when counsel sent copies of the Summons and Complaint to Ms. Long and her bankruptcy attorney, Mr. Jarnicki, by regular first-class U.S. mail, as reflected in the First Certificate of Service, which is not the same time as when the regular, first-class mail service was sent to Ms. Long pursuant to Ohio R. Civ. P. 4.6(D) on April 1, 2025. Plaintiff's counsel asserts that as a result of the foregoing service "has been remitted" to Ms. Long, the Defendant, three times. Resp. at 2-3, ¶ 4.

On August 11, 2025, two weeks after Plaintiff filed her Response, Ms. Long filed *Defendant's Reply to Plaintiff's Response in Opposition to Motion/Amended Motion to Dismiss* (Doc. 10) (the "Reply"). The Reply asserts, in part, that Plaintiff's service under Ohio law was defective because it was not issued by the Clerk of Court. *See* Reply at 3 (asserting "[t]here is no provision in any law that allows a party, not the Clerk, for a complaint and summons, to claim certified mail was issued . . . ."). And Defendant argues that actual notice and knowledge of a lawsuit does not overcome and is not a substitute for proper service of process. *Id.* at 3-5. The Reply also asserts that even if counsel could issue service under Ohio law, Plaintiff has failed to file any of the documents and information required under the Ohio Rules of Civil Procedure to establish that proper certified mail service (or regular mail follow-up service) was issued and completed. *See id.* at 7-10 (acknowledging that "Fed. R. Civ. P. 4(e) allows service by complying with State law" but asserting that, amongst other things, "the endorsed returned mail" is not on the record and that "there is not even an allegation, or a certification, or documentation, of any attempt at actual full compliance with Ohio law" as "[t]here is no certified mail 'unclaimed' (or returned to the clerk), . . . [and] no reissued and corrected summons . . . ."). Defendant's counsel also states that "counsel cannot find anywhere in B[ankr]. R. 7004 that contains the permission for service 'by legal counsel,' as Plaintiff's responsive memorandum avers" and that, again, "all methods, like in State court, *are to be accomplished by the Clerk, not a private party or attorney*." *Id.* at 10-11 (citing Ohio R. Civ. P. 4.1).

Interwoven into these arguments, Defendant's counsel appears to question the ability to use regular first-class mail service in bankruptcy. *Id.* at 10-15 (arguing a variety of things, such as that "Plaintiff's argument that only first-class mail by itself sent by the attorney is good service,

appears to be contrary to law" and later asserting that regular mail service "by unofficial mail from a private attorney's address, forces a defendant, who gets something from an adverse attorney, to *have to* accept it, as opposed to receiving something from a court's clerk, which facially and automatically involves a higher degree of officialdom and respect. A party should not have to even take or open some junk or other unsolicited whatever from an attorney . . . .").

Because the Reply was filed a week past the seven (7) day time period to file a reply under Local Bankruptcy Rule ("LBR") 9013-1(c)—fourteen (14) days after the Response was filed—Ms. Hursey filed *Plaintiff's Motion to Strike Defendant's Reply to Plaintiff's Response in Opposition to Motion/Amended Motion to Dismiss (Doc. 10)* (Doc. 11) (the "Motion to Strike") on August 14, 2025. Ms. Long then filed *Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike and alternative Motion to Accept Filing Instanter* (Doc. 13), followed by an alleged *Amended Response to Motion to Strike* (Doc. 14), according to the docket entry,[14] both on August 19, 2025. Therein, Defendant's counsel states, in essence, that they "simply overlooked the Local B.R., acting on prior practice in the Southern District of the Federal District Court in general." Doc. 13 at 2. On the same day, Ms. Long's counsel also filed *Defendant's First Motion to Extend Response Time* (Doc. 15) (the "First Motion to Extend Time") to supplement the amended *Motion to Accept Filing Instanter* (Doc. 14) "to avoid any objection for not including in Doc. 14 the 21-day Notice provisions as excepted by General Order 12-4." Doc. 15 at 1. Last, Ms. Hursey's counsel filed *Plaintiff's Reply Memorandum in Support of its Motion to Strike Defendant's Reply to Plaintiff's Response in Opposition to Motion/Amended Motion to Dismiss (Doc. No. 11)* (Doc. 16) on August 26, 2025, asserting that because "[t]here is no allegation that Defendant does not have notice of this lawsuit," and that "Defendant has not been prejudiced" given no default motion was ever filed, "this matter should be decided on the merits." Doc. 16 at 2 (citing Bankruptcy Rule 1001(a)). In short, Plaintiff makes an equitable appeal.

And that is where this adversary proceeding currently stands—all told, a total of thirteen filings ultimately concerning the issue of service of process upon the Debtor in this adversary, which has yet to be accomplished in compliance with Bankruptcy Rule 7004.

[14] There do not appear to be any changes in the Amended Response to Motion to Strike (Doc. 14), substantive or otherwise, in comparison to the Response to Motion to Strike (Doc. 13).

IV. Analysis

A. Civil Rule 12(b)(5) – Insufficient Service of Process

Civil Rule 12(b)(5), made applicable to this adversary proceeding by Bankruptcy Rule 7012(b), permits a defendant to move to dismiss an action for "insufficient service of process[.]" *See W. Bend Mut. Ins. Co. v. Osmic, Inc.*, No. 1:21-CV-00593-PAB, 2023 U.S. Dist. LEXIS 170985, at *12, 2023 WL 6258796, at *4 (N.D. Ohio Sept. 26, 2023); *Cook v. Dep't of Safety of Tenn.* (*In re Cook*), 421 B.R. 446, 456 (Bankr. W.D. Tenn. 2009). "A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery, the lack of delivery, or the timeliness of delivery of the summons and complaint." 5B *Wright & Miller's Federal Practice & Procedure* § 1353 (4th ed. Sept. 2025) (numerous citations omitted).

Plaintiff bears the burden of perfecting and proving service. *Osmic, Inc*., 2023 U.S. Dist. LEXIS 170985 at *12, 2023 WL 6258796, at *4. In other words, "[P]laintiff bears 'the burden of establishing [the service's] validity.' " *Chapman v. Lawson*, 89 F. Supp. 3d 959, 971 (S.D. Ohio 2015) (quoting *Metro. Alloys Corp. v. State Metals Indus., Inc.*, 416 F. Supp. 2d 561, 563 (E.D. Mich. 2006)). Courts may consider " 'record evidence' and 'uncontroverted affidavits' " in determining whether a plaintiff has met its burden. *Id.* (quoting *Metro. Alloys Corp.*, 416 F. Supp. 2d at 563). Moreover, courts may, without converting a Civil Rule 12 motion to dismiss "to one for summary judgment[,]": (1) consider documents integral to or attached to the pleadings; (2) examine public documents; and (3) " 'take judicial notice of proceedings in other courts of record. . . .' " *Id.* at 973 n.4 (citing *Com. Money Ctr., Inc. v. III. Union Ins. Co*., 508 F.3d 327, 336 (6th Cir. 2007); *Wyser-Pratte Mgmt. Co. Inc. v. Telxon Corp*., 413 F.3d 553, 560 (6th Cir. 2005) (citing *Kostrzewa v. City of Troy*, 247 F.3d 633, 644 (6th Cir. 2001) and quoting *Rodic v. Thistledown Racing Club, Inc*., 615 F.2d 736, 738 (6th Cir. 1980) (quoting *Granader v. Pub. Bank*, 417 F.2d 75, 82-83 (6th Cir. 1969))). For the purpose of resolving the pending Amended Motion to Dismiss, the Court takes judicial notice of the papers filed in both the chapter 13 case, No. 24-31855, and in this adversary proceeding, pursuant to Rule 201(c)(1) of the Federal Rules of Evidence.

B. Service of Process in this Adversary Proceeding

1. Bankruptcy Rule 7004 and Civil Rule 4

Bankruptcy Rule 7004 governs the issuance and service of a summons and complaint in an adversary proceeding filed in bankruptcy court. "[S]erving a summons . . . establishes personal jurisdiction over a defendant" in an adversary proceeding. Fed. R. Bankr. P. 7004(f); *see also Brown v. Nelnet* (*In re Brown*), No. 18-80158, 2019 Bankr. LEXIS 1836, at *3 (Bankr. W.D. Mich. June 14, 2019) ("[p]roper service of the summons and complaint is crucial to a court's obtaining personal jurisdiction over a defendant, and improper service may give rise to a due process challenge, resulting in a collateral attack on the judgment under Fed. R. Bankr. P. 9024").[15] Proper service of process on an individual may be made through first class mail to their usual "dwelling or usual place of abode or where the individual regularly conducts a business or profession[.]" Fed. R. Bankr. P. 7004(b)(1). However, if service is on the debtor, they may be served[16] "by mailing [the summons and complaint] . . . to the address shown on the debtor's petition or the address the debtor specifies in a filed writing[.]"[17] Fed. R. Bankr. P. 7004(b)(9). Service may also be made in a manner that complies with state law. *See* Fed. R. Bankr. P. 7004(a)(1), (b)(1) and (b)(7); Fed. R. Civ. P. 4(e)(1); *see also Smith v. Vista Hill Partners, LLC* (*In re Smith*), 510 B.R. 164, 167-68 (Bankr. S.D. Ohio 2014) (discussing Bankruptcy Rule 7004(b)(7) and citing *French v. Butler* (*In re Brady*), No. 13-3063, 2013 Bankr. LEXIS 3352, 2013 WL 4453039, at *3 (Bankr. N.D. Ohio Aug. 16, 2013) (discussing proper service by certified mail, authorized by Fed. R. Bankr. P. 7004(b)(7) and Ohio Civ. R. 4.2(A), evidenced by a signed "green card" receipt).[18]

Authorizing the plaintiff to "follow[] state law for serving a summons" under Ohio law, pursuant to Civil Rule 4(e)(1) and Bankruptcy Rule 7004(a)(1), however, does not negate or

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[15] The Amended Motion to Dismiss is not based on lack of personal jurisdiction under Civil Rule 12(b)(2), such that this defense was waived pursuant to Civil Rule 12(h)(1)(A) and (g)(2).

[16] Although it may seem obvious, Bankruptcy Rule 7004(b)(9) states that this subdivision only applies "after a petition is filed by or served upon a debtor, and until the case is dismissed or closed[.]"

[17] Commonly, the "writing" is a change of address notice filed in the main case.

[18] The Court notes here that, technically, Civil Rule 4(e)(1), made applicable by Bankruptcy Rule 7004(a)(1), appears to be the basis upon which to serve a bankruptcy court summons and complaint by United States certified mail, return receipt requested in accordance with Ohio Civ. R. 4.1(A)(1)(a), given that the provisions under subdivision (b) of Bankruptcy Rule 7004, including (b)(7), authorize service "by first-class mail, postage prepaid," not by certified mail, which is specifically required under subdivision (h) for service on insured depository institutions. But this may be another distinction without a difference.

override the other provisions of Bankruptcy Rule 7004 that are "structural" to how service works in bankruptcy, regarding the language of the summons, the answer period, and the time limits for service and service of a particular summons. Therefore, at some point, Bankruptcy Rule 7004 and state law do not mesh—do not logistically work—given the fundamentally different approach toward the answer period in bankruptcy, which is keyed off the issuance of the summons, not service of the summons. *See* Fed. R. Bankr. P. 7004(e)(1) and 7012(a)(1). This different approach to the answer period is why service of a bankruptcy court summons and complaint, regardless of the manner of delivery authorized by Civil Rule 4(e) (as well as by all other methods), "must be served within 7 days after the summons is issued." Bankr. P. 7004(e)(1). A summons issued by the bankruptcy clerk[19] becomes stale after seven days and "a new summons must be issued" if service has not been effectuated within that 7-day period. Fed. R. Bankr. P. 7004(e)(1). Proof of service "by the server's affidavit" to "the bankruptcy judge"[20] is required by Civil Rule 4(l)(1), but the failure to prove service "does not affect the validity of service" and "[t]he court may permit proof of service to be amended."[21] Fed. R. Civ. P. 4(l)(1) and (l)(3).

As a general matter, the Sixth Circuit tends to require strict compliance when it comes to the sufficiency of service of process. *Bavelis v. Doukas* (*In re Bavelis*), 453 B.R. 832, 863 (Bankr. S.D. Ohio 2011). Another Bankruptcy Court in this District has previously held as follows:

> Although some courts construe the service requirements for a summons liberally and require only substantial compliance with those requirements if the defendant obtains actual notice of the lawsuit, the Court concludes that the Sixth Circuit would require plaintiffs to strictly comply with the applicable service requirements despite any actual notice the defendants have of the litigation.

Id. at 863-64 (citing *Friedman v. Estate of Presser*, 929 F.2d 1151, 1156 (6th Cir. 1991) ("Due to the integral relationship between service of process and due process requirements, we find that the

[19] Bankruptcy Rule 9001(b)(2) defines the term "clerk," as used in Bankruptcy Rule 7004(a)(2), to mean "a bankruptcy clerk if one has been appointed[.]"

[20] Bankruptcy Rule 9002(d) defines the term "court," as used in the Civil Rules, when made applicable by the Bankruptcy Rules, such as Civil Rule 4(l) made applicable by Bankruptcy Rule 7004(a)(1), to mean the "bankruptcy judge if the . . . proceeding is pending before a bankruptcy judge."

[21] In this case, due to the Summons going stale on January 22, 2025, and the only service attempted within that time period being by certified mail under Ohio law as set forth in the Second Certificate of Service, there is no amendment to proof of service that would make a difference, short of Plaintiff's counsel producing a signed green card evidencing successful service under Ohio Civ. R. 4.1(A)(1)(a) and (A)(2). But Plaintiff's Response represents that will not happen because the certified mail was allegedly returned unclaimed.

district court erred in its determination that actual knowledge of the action cured a technically defective service of process.")). As the Sixth Circuit has stated, " 'the requirement of proper service of process is not some mindless technicality.' " Id. at 864 (quoting *Friedman*, 929 F.2d at 1156). Moreover, a District Court for this District has previously reversed, as an error of law, a ruling of another Bankruptcy Court that did not require strict compliance with Bankruptcy Rule 7004, in that case subdivision (h), on the basis that the defendant had "actual notice of the adversary proceeding." *PNC Mort. v. Rhiel*, Nos. 2:10-cv-578 and 2:10-cv-579, 2011 U.S. Dist. LEXIS 28339, at *14-15, 2011 WL 1043949, at *5 (S.D. Ohio Mar. 18, 2011) (concluding that "the technical error[22] rendered service of process defective" and "[t]he default judgment against PNC is thus void, and the Bankruptcy Court abused its discretion in not vacating the judgment.") (discussed in *Bavelis*, 453 B.R. at 864). Therein, the District Court observed that "Sixth Circuit precedent suggests that in cases of defective service of process, the fact that a defendant may have actual notice of an action is irrelevant." *Rhiel*, 2011 U.S. Dist. LEXIS 28339, at *14, 2011 WL 1043949, at *5.

Plaintiff's primary legal argument, appearing to implicitly concede that service did not comply with Bankruptcy Rule 7004, is that service on an individual should be " ['liberally construed to further the purpose of finding personal jurisdiction in cases in which the party has received actual notice.']" Resp. at 3, ¶ 6 (quoting *Slone–Stiver v. Mazer Corp.* (*In re Interstate Graphics*), 223 B.R. 116, 122 (Bankr. S.D. Ohio 1998) (citing *Gazes v. Kesikrodis* (*In re Ted A. Petras Furs, Inc.*), 172 B.R. 170, 177 (Bankr. E.D.N.Y. 1994)). However, that prior opinion by Judge Waldron concerned a Civil Rule 12(b)(5) defense asserted in an answer that was later presented by way of the defendant corporation's motion to dismiss or for summary judgment, filed

[22] The technical error was that Plaintiff addressed the certified mail "to the attention of an 'Officer, Managing or General Agent' of PNC as opposed to just an 'Officer' " as required by Bankruptcy Rule 7004(h). *Rhiel*, 2011 U.S. Dist. LEXIS 28339, at *9-10 (concluding that "Rhiel did not meet the technical requirements of Rule 7004(h) in effectuating service of process in this case."). This is the level of detail sometimes fought over in bankruptcy as evidenced by the more recent (2022) addition of subdivision (i) to Bankruptcy Rule 7004, which provides that, for certain categories of entities including insured depository institutions, "[t]he defendant's officer . . . need not be correctly named in the address—or even be named—if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title." Fed. R. Bankr. P. 7004(i); Notes of Advisory Committee on 2022 Amendments ("New Rule 7004(i) is intended to reject those cases interpreting Rule 7004(b)(3) and Rule 7004(h) to require service on a named officer, managing or general agent or other agent, rather than use of their titles.").

on the same day that the chapter 7 trustee filed a motion for summary judgment. *Mazer Corp.*, 223 B.R. at 120-22. Thus, the Court observed as follows:

> [A] defense under Rule 12(b), even when properly raised initially, can be waived through conduct of the party "demonstrating that it unmistakingly submitted itself to the jurisdiction of the . . . court." *Manchester Knitted Fashions, Inc. v. Amalgamated Cotton Garment & Allied Indus. Fund*, 967 F.2d 688, 692 (1st Cir. 1992). Therefore, actively participating in a case by filing documents addressing the merits of the controversy and otherwise taking part in substantive determinations waives a party's Rule 12(b) defense. *Id.* at 692-693 (collecting cases).
>
> Mazer Corporation has actively participated in all stages of this action, including actively litigating the parties' cross motions for summary judgment now before the court. Mazer has made no showing that it has suffered any prejudice as a result of the Trustee's failure to obtain proper service or that it has otherwise been prevented from fully asserting any defenses it wishes to raise in response to the allegations contained in the Trustee's complaint. In the circumstances of this proceeding, insufficiency of service of process does not provide a basis for dismissal. The court concludes, despite the Trustee's inattention to filing and service requirements, which unnecessarily increased the issues in this proceeding, Mazer's motion to dismiss is denied.

Mazer Corp., 223 B.R. at 122. Accordingly, that prior opinion can comfortably exist alongside this current opinion addressing the Amended Motion to Dismiss asserted under Civil Rule 12(b)(5) that was filed before the Debtor participated in any other stage of this adversary proceeding, which has been stalled by the service of process issues that have, as in the *Mazer* adversary proceeding, "unnecessarily increased the issues[.]" *Id.* In this case, Bankruptcy Rule 7004 was not complied with such that deeming the service of process to be sufficient absent a waiver would be to ignore the rules of the road and the Sixth Circuit's opinions on how to implement those rules.

The arguments by Defendant's counsel that only the Clerk can issue service by certified mail (as discussed in part IV.B.3 below) and that, more generally, first-class mail service from an attorney is not official enough, both miss the mark under Bankruptcy Rule 7004. His apparent philosophical disagreement with the inner workings of Bankruptcy Rule 7004 and service by mail,[23] as stated in the Motion to Dismiss and Reply, is not dispositive in this adversary proceeding, even though he ultimately is correct that service of process, to date, has been

[23] As used in Bankruptcy Rule 7004, the term "mail" is defined to mean "first-class mail, postage prepaid." Fed. R. Bankr. P. 9001(b)(8).

insufficient, although for different and less philosophical reasons. As revealed by a later filing, namely the Amended Memorandum in Opposition to Plaintiff's Motion to Strike (Doc. 14), this could be due to his, self-described, greater familiarity with the rules applicable in district court and state court, and not so much the rules in bankruptcy court.

It is well-established in bankruptcy that nationwide service of process by first-class mail, postage prepaid, issued by an attorney for the plaintiff, is sufficient to accomplish proper service under Bankruptcy Rule 7004(b) and (d). 10 *Collier on Bankruptcy* ¶ 7004.04 (Richard Levin Henry J. Sommer eds., 16th ed. 2026) ("Service by mail under Bankruptcy Rule 7004(b) is an alternative means to personal service or service pursuant to state law." And "[a]lthough Rule 7004(b) has been attacked as violative of due process, its validity consistently has been sustained." (citing *In re Park Nursing Ctr., Inc.*, 766 F.2d 261 (6th Cir. 1985) (decided under former Rule 704(c)) (other citation omitted))). Further, Bankruptcy Rule 7004(a)(2)(B) specifically states that "[t]he clerk may . . . deliver the summons to the person who will serve it." And Bankruptcy Rule 7004(a)(3) permits anyone "who is at least 18 years old and not a party" to "personally serve a summons and complaint under Fed. R. Civ. P. 4(e)-(j)." Moreover, Civil Rule 4(c)(1), made applicable by Bankruptcy Rule 7004(a)(1), states that "*plaintiff* is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service." (emphasis added). *See also* 10 *Collier on Bankruptcy* ¶ 7004.03 ("Since plaintiff's attorney is not strictly speaking a 'party,' however, the attorney should be able to effect service.' " (citations omitted)).

Ms. Hursey filed the Complaint initiating this adversary on January 13, 2025. The Summons was issued on January 14, 2025. *See* Doc. 2. The next entry on the docket[24] was not until June 4, 2025, when Plaintiff's counsel filed the First Certificate of Service (Doc. 3), in which Plaintiff's counsel certified that "service of this summons and a copy of the complaint was made June 3, 2025[.]" Doc. 3 at 2. This attempt at service did not comply with Bankruptcy Rule 7004(e)(1) because the Summons, at that point, was 132 days stale.[25]

[24] Technically, the next docket entry, on June 3, 2025, was to note the transfer of this case to the current bankruptcy judge. And, interestingly, the completed Summons with Certificate of Service, filed the next day, reflects that Plaintiff's counsel served the Summons and Complaint on the same day the transfer was docketed at 7:14 a.m. EDT.

[25] This is calculated from June 3, 2025, back to January 22, 2025, the eighth (8th) day after the Summons was issued.

"Unlike the deadline for answering a complaint in non-bankruptcy litigation, which generally runs from the date the plaintiff *serves* the summons, the deadline for answering a complaint in an adversary proceeding in bankruptcy runs from the date the Clerk *issues* it." *Nelnet*, 2019 Bankr. LEXIS 1836, at *2-3 (citing Fed. R. Bankr. P. 7012(a)) (emphasis in original). This is why Bankruptcy Rule 7004(e)(1) requires a summons and complaint, domestically, to be served "within 7 days after the summons is issued." And it is why, "[i]f a summons is not timely delivered or mailed, a new summons must be issued." Fed. R. Bankr. P. 7004(e)(1). The reason for this approach in bankruptcy, which differs from the practice in federal district courts and in Ohio state courts, is to " 'further the policy of moving bankruptcy cases to a conclusion as quickly as possible[;]" thus, why "the issuance of the summons [is] the key date in computing the time to answer . . . .' " *Evans v. Codilis & Stawiarski, P.A.* (*In re Evans*), No. 05-03017, 2005 Bankr. LEXIS 2127, at *3 (Bankr. N.D. Fla. Sept. 13, 2005) (quoting *Lawrence v. Willow Point on the Bay* (*In re Interco Sys., Inc.*), 185 B.R. 447, 451, n.1 (Bankr. W.D.N.Y. 1995)). But that policy has not been realized in this adversary proceeding.

Because the Summons was clearly "stale" as of June 3, 2025, and the answer date triggered by issuance of that Summons under Bankruptcy Rule 7012(a)(1) had long since passed—it was Thursday, February 13, 2025, which was 30 days after issuance—Plaintiff would have needed to obtain the issuance of a new summons.[26] *See* Fed. R. Bankr. P. 7004(e)(1) ("a new summons *must* be issued"). Yet, at that point in time, Plaintiff was already two (2) months beyond the 90-day window to serve the Defendant under Civil Rule 4(m). That window expired on April 13, 2025, as asserted by Defendant in her Motion to Dismiss. *See* Mot. to Dismiss at 4.

As it concerns service on the Defendant (as opposed to service on the Defendant Debtor's attorney discussed below), it is curious that counsel for the Plaintiff did not file a certificate of service of the Summons until 140 days after the Summons was issued, 141 days after the Complaint was filed, and immediately after receipt of notice of the transfer of this adversary proceeding. *See* First Cert. of Serv. (Doc. 3). Moreover, the First Certificate of Service concerned

[26] Absent obtaining the issuance of and properly serving a new summons along with the Complaint, Plaintiff would have had to obtain a waiver of service from the Defendant to establish personal jurisdiction over the Defendant in this adversary proceeding. *See* Fed. R. Bankr. P. 7004(f) ("serving a summons or filing a waiver of service under this Rule 7004 or the applicable provision of Fed. R. Civ. P. 4 establishes personal jurisdiction over a defendant . . . (2) in a civil proceeding arising under the Code"). However, obtaining a new summons, as required by Bankruptcy Rule 7004(e)(1), is simple and is actually done by the attorney. *See https://www.ohsb.uscourts.gov/how-file-new-cases* (Adversary Proceedings - Summons).

what Plaintiff's Counsel now explains was actually the last of three efforts to serve the Summons and Complaint, on June 3, 2025, long after the Summons went stale on January 21, 2025. Adding to the curiousness, only after Defendant had filed her Motion to Dismiss and Amended Motion to Dismiss did Plaintiff file the Second and Third Certificates of Service (Docs. 7 and 8), asserting that service was originally attempted on January 14, 2025, six months earlier, by certified mail, followed by regular mail on April 1, 2025, all of which are discussed in part IV.B.3 below. While true that "[t]he court may permit proof of service to be amended" pursuant to Civil Rule 4(l)(3), made applicable by Bankruptcy Rule 7004(a)(1)), filing a certificate of service this long "after service was purportedly made[,]" out of sequence in comparison to when service was purportedly made, and only after the Amended Motion to Dismiss had been filed, leads to questions, if not "call[ing] the certificate's accuracy into question." *Muncy v. Fin. Serv. Ctrs. of Ohio, LLC* (*In re Muncy*), 658 B.R. 149, 152 (Bankr. S.D. Ohio 2024) (citing *Wolffe v. Galdenzie*, No. CV 22-5164, 2024 U.S. Dist. LEXIS 8522, at *4, 2024 WL 185290, at *2 n.3 (E.D. Pa. Jan. 17, 2024)). Moreover, because Plaintiff has not filed on the docket the necessary details of the certified mail service, as required by Ohio Civ. R. 4.1(A)(1)(a), (A)(2), and Ohio Civ. R. 4.6(D), such as the return receipt requested number or a copy of the unclaimed certified mail envelope that was returned "unclaimed," as is done in Ohio state court, there is no way to know or verify what happened with the alleged attempted certified mail service. The Second and Third Certificates of Service do not include any of these details as further discussed below.

2. Service on Debtor's Attorney – Bankruptcy Rule 7004(g)

Sticking with the theme that service in bankruptcy is different, there is "[t]he unusual requirement to serve debtor's counsel [which] has led some attorneys—even those versed in bankruptcy procedure—to fail in their efforts at good service." *Moss. v. Pepin* (*In re Pepin*), 619 B.R. 266, 270 (Bankr. D.N.M. 2020) (citing *Dreier v. Love* (*In re Love*), 232 B.R. 373, 381 (Bankr. E.D. Tenn. 1999); *United States Escrow v. Bloomingdale* (*In re Bloomingdale*), 137 B.R. 351, 354 (Bankr. C.D. Cal. 1991)). "Service upon the debtor without service upon its attorney or vice-versa is insufficient; both must be served." 10 *Collier on Bankruptcy* ¶ 7004.04 (Richard Levin & Henry J. Sommer, eds., 16th ed. 2026) (citations omitted); *see also Robinson v. Lefler* (*In re Lefler*), 319 B.R. 538, 541 (Bankr. E.D. Tenn. 2004) (quoting *Love*, 232 B.R. at 377). As this Court previously noted in another adversary proceeding, the purpose of Bankruptcy Rule 7004(g) is " 'to avoid the possibility that a Debtor, represented by counsel in the bankruptcy case, could be served with

process in an adversary proceeding, without counsel's knowledge, setting up conditions for a default judgment if the Debtor did not respond.' " *Friesinger v. Thomas* (*In re Thomas*), No. 25-3005, 2025 Bankr. LEXIS 1656, at *3, 2025 WL 1891803, at *1 (Bankr. S.D. Ohio July 3, 2025) (quoting *Cutuli v. Elie* (*In re Cutuli*), 389 F.Supp.3d 1051, 1056 (M.D. Fla. 2019) (quoting *In re Ellis*, 2012 Bankr. LEXIS 4838, at*10, 2012 WL 4904540, at *2 (Bankr. D. Kan. Oct 15, 2012))). "Service of a stale complaint gives the defendant the right to file a motion to dismiss the proceeding." *Pepin*, 619 B.R. at 270 (citing Civil Rule 4(m)).

When a debtor is represented by an attorney, service must also be made on the attorney by a means authorized by Federal Rule 5(b), made applicable by Bankruptcy Rule 7005. *See* Fed. R. Bankr. P. 7004(g). Federal Rule 5(b) allows for attorneys to be served in a variety of ways, including by "sending [the filing] to a registered user by filing it with the court's electronic filing system[.]" Fed. R. Civ. P. 5(b)(2)(E). However, in this District, LBR 7004-1(b), as well as ECF Procedures 2(e) and 9(a)(1) of the Administrative Procedures for Electronic Case Filing, essentially state that a summons and complaint in an adversary proceeding cannot be served upon a debtor's attorney through the Court's ECF system; rather, a paper copy must be served. The current Court's predecessor entered many orders on this very issue, including an order in a prior adversary proceeding against the Debtor's former husband regarding dischargeability of the same debt. *See* Order Requiring Filings and Notice of Imminent Dismissal, *Gantz*[27] *v. Long* (*In re Long*), Adv. Pro. No. 21-03014 (Bankr. S.D. Ohio Sept. 16, 2021) (ECF No. 3); *see also* Order Requiring Filings and Notice of Imminent Dismissal, *Abbey Credit Union, Inc. v. Heatherly* (*In re Heatherly*), Adv. Pro. No. 24-03002 (Bankr. S.D. Ohio May 1, 2024) (ECF No. 10).

There is no indication in the record that Plaintiff's counsel attempted to serve the Summons on the Debtor's attorney, by any method, prior to June 3, 2025, long after the Summons had gone stale.[28] The docket for this adversary proceeding indicates that notice of the filing of the Complaint was sent electronically to the attorney for the Debtor in the estate case, Brent Jarnicki, on January

[27] Plaintiff Jennifer Hursey was formerly known as Jennifer Gantz, as set forth in the Complaint filed in this adversary proceeding and in the Second Amended Complaint and Loan Agreement attached as Exhibit A thereto, which were attached to her proof of claim, No. 4-1, filed in Debtor's chapter 13 case, No. 24-31855, on December 5, 2024.

[28] In the Response (Doc. 9) filed by Plaintiff to the Motion to Dismiss on July 28, 2025, Plaintiff asserts that "[a]t the same time and although not required to perfect service upon Ms. Long, Ms. Hursey's counsel also served Ms. Long at her personal residence by first-class mail with the correspondence to Mr. Jarnicki enclosing the Summons and Complaint." Resp. at 2, ¶ 4 (citing Doc. No. 2). But Plaintiff does not say in the Response when this service was effected, and Docket Number 2 is the unserved Summons, which does not reflect any service.

13, 2025, through the Court's Electronic Case Filing ("ECF") System.[29] *See* Complaint, No. 25-3002 (Doc. 1); Complaint, No. 24-31855 (Doc. 25). However, the *Summons* was not served on the Debtor's attorney through the ECF system. *See* Summons (Doc. 2). But even if it was, service of either the Complaint or Summons in this manner upon the Debtor's attorney would not have been sufficient under Civil Rule 5(b)(2)(E),[30] which nationally permits service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system[,]" because, as previewed above, LBR 7004-1(b) and ECF Procedures 2(e) and 9(a)(1) locally provide, each in slightly different language, that "[r]egistration as a Filer"[31] does not constitute "a written request for" or "consent to, electronic service via receipt of a 'Notice of Electronic Filing' from ECF . . . with regard to a summons and complaint under Rule 7004 . . . (LBR 7004-1)." ECF Procedure 2(e).[32] Thus, to serve the Debtor's attorney, Plaintiff needed to utilize another method of service authorized by Civil Rule 5(b), made applicable by Bankruptcy Rule 7004(g), which includes but is not limited to "mailing it to the person's last known address—in which event service is complete upon mailing[.]" Fed. R. Civ. P. 5(b)(2)(C). And Plaintiff's counsel did not do this until June 3, 2025, long after the Summons had gone stale. *See* Certificates of Service (Docs. 3, 7, and 8).

Accordingly, the Debtor's attorney was never properly served, and for this reason alone service of process on the Debtor, as the Defendant in this adversary proceeding, was insufficient.[33]

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[29] *See* ECF Procedure 1(b).

[30] Civil Rule 5 was last amended in 2018, effective December 1, 2018, to "revise the provisions for electronic service." Advisory Committee Notes to 2018 Amendments. The Advisory Committee Notes state that "a party who registers [as a user of the court's transmission facilities] will be subject to service through the court's facilities unless the court provides otherwise." *Id.* The Local Bankruptcy Rules were last revised effective October 1, 2020, and the Southern District of Ohio Administrative Procedures for Electronic Case Filing took effect on December 1, 2016.

[31] The term "Filer" is defined in ECF Procedure 2(a) to include, amongst other categories, "(1) attorneys admitted to practice in the United States Bankruptcy Court for the Southern District of Ohio . . . ." ECF Procedure 2(a)(1).

[32] ECF Procedure 9(a)(1) provides that "the transmission from the court to a Filer or User of the 'Notice of Electronic Filing' of a pleading or other document constitutes notice and service of the filed document upon that Filer or User, *except that* paper copies of a summons and complaint under Rule 7004 or the initial motion under Rule 9014 must be served in accordance with those Rules to effectuate service[.]"

[33] Notably, Plaintiff's counsel also represented Ms. Hursey f/k/a Ms. Gantz in a prior non-dischargeability adversary proceeding concerning the same debt, but against the Debtor's former husband. In that adversary proceeding Plaintiff's counsel also sent the original summons and complaint by certified mail service, but the certified mail service was successful and a green card was filed on the docket with the Certificate of Service of the Summons (No. 21-03014,

The Court could stop here, but the parties have raised the issue of (and Defendant has fervently opposed) the validity of service of a bankruptcy court summons and complaint under Ohio law, and this is an issue not often written about, so the Court will provide its analysis and conclusions.

3. Use of Ohio Law Under Civil Rule 4(e)(1) to Serve the Debtor

Notwithstanding the three Certificates of Service and efforts to serve the Summons and Complaint on January 14, April 1, and June 3, 2025, Plaintiff's counsel mainly asserts that service of process was proper on the basis that she "issued service of the Summons and Complaint by regular, first-class mail on April 1, 2025 to Ms. Long at her personal residence in accordance with Fed. R. Civ. P. 4(e)(1) . . . and Ohio Civ. P. R. 4.6(D)." Resp. at 2, ¶ 3 (citing to the Third Certificate of Service (Doc. 8) filed on July 14, 2025, concerning service made on April 1, 2025, of the Summons issued on January 14, 2025); *see also* Resp. at 4, ¶ 7 (stating "Ms. Hursey's counsel properly served the Summons and Complaint in accordance with Fed. R. Civ. P. 4(e) and Bankruptcy Rule 7004(a)(2)."). Thus, Plaintiff's counsel has put this issue squarely before the Court.

In addition to Plaintiff's failure to serve the Debtor's attorney, as discussed in par IV.B.2 above, no valid summons was ever successfully served on the Debtor, as the Defendant in this adversary proceeding, given that: (a) the first-class mail service attempted on June 3, 2025 was issued with the stale Summons, as discussed in part IV.B.1 above; (b) the only service attempted before the Summons became stale—the initial certified mail service attempted on January 14, 2025—was ineffective under Ohio law because it was returned unclaimed (according to Plaintiff's counsel's representation in the Response); and (c) as it concerns the subsequent attempt to serve the Debtor, allegedly by regular mail under Ohio law pursuant to Ohio Civ. R. 4.6(D)[34] on April 1, 2025, that was likewise ineffective because, again, the Summons had gone stale months before.

Doc. 2). Despite that, service on the debtor was still not completed within the 90-day window of Civil Rule 4(m) because Plaintiff's counsel had not served the debtor's attorney pursuant to Bankruptcy Rule 7004(g) for the same reasons discussed in this Opinion and Order. *See* Order Requiring Filings and Notice of Imminent Dismissal, *Gantz v. Long* (*In re Long*), Adv. Pro. No. 21-03014 (Bankr. S.D. Ohio Sept. 16, 2021) (ECF No. 3). Because the summons had gone stale, Plaintiff's counsel was advised that "a new summons must be issued and served" in accordance with Bankruptcy Rule 7004(e) and Plaintiff's counsel was given approximately 43 more days to complete service pursuant to Civil Rule 4(m). *Id.*

[34] Had Plaintiff's counsel obtained a new summons and served that to the Debtor at the address on her petition on April 1, 2025, that would have satisfied Bankruptcy Rule 7004(b)(9).

To be thorough, however, the Court will further discuss this Ohio law basis upon which Plaintiff now claims service of process was proper.

Ohio law allows for service by certified mail, return receipt requested, through the clerk's office. Ohio R. Civ. P. 4.1(A)(1)(a). However, if the certified mail is returned as refused or unclaimed, then Ohio law requires follow-up service by "ordinary mail," after a request is made to the clerk's office by the serving party. Ohio R. Civ. P. 4.6(C) and (D). As acknowledged by Defendant's counsel, the United States District Court in Dayton has previously held that certified mail service completed by an attorney that "otherwise complies with the federal[35] and Ohio rules is valid" because "[t]he clerk performs no special function under the Ohio rules" and "an attorney may undertake the clerk's function in certified mail service under the Ohio rules . . . ." *Piercey v. Miami Valley Ready-Mixed Pension Plan*, 110 F.R.D. 294, 296 (S.D. Ohio 1986) (Rice, J.). And the subsequent opinion by the United States Court of Appeals for the Sixth Circuit cited by Defendant's counsel does not hold to the contrary; in fact, it confirms this conclusion wherein the Sixth Circuit held that certified mail service issued by Plaintiff LSJ Investment Company on the Friedman and O.L.D. Defendants "complied both with Ohio rules and with due process." *See* Reply at 10-12 (quoting *LSJ Inv. Co. v. O.L.D., Inc.*, 167 F.3d 320, 322-23 (6th Cir. 1999)).[36] But the *Piercey* opinion does not address regular mail follow-up service under Ohio Civ. R. 4.6(D) because in that case the return receipts requested were executed and returned. 110 F.R.D. at 295.

According to the Second Certificate of Service (Doc. 7), Plaintiff's attorney served Ms. Long at the address[37] listed in her Voluntary Petition (Doc. 1) filed in her chapter 13 bankruptcy

[35] The *Piercey* decision, issued in 1986, was based upon Fed. R. Civ. P. 4(c)(2)(C)(i), which permitted "service in accordance with Ohio law" and was a pre-cursor to the present Fed. R. Civ. P. 4(e)(1). *See, e.g.*, *Scarton v. Charles*, 115 F.R.D. 567, 570 (E.D. Mich. 1987) (discussing how Fed. R. Civ. P. 4(c)(2)(C)(i) replaced 4(d)(7), which was repealed in 1983 and provided that "a defendant may be served 'pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that state.' ").

[36] The Defendant also argues that service by "only first-class mail by itself sent by the attorney" is contrary to law. Reply at 10-11 (citing *LSJ Inv.*, 167 F.3d 322 ("The notes to the 1993 amendments to Fed. R. Civ. P. 4(d) make clear that under current rules a *waiver* of service may be sent by mail, but service itself cannot be effected by mail without the affirmative cooperation of the defendant.")). This passage in the *LSJ* opinion concerns a "former service-by-mail provision" that, as explained in the 1993 Advisory Committee Notes, was more accurately described "as a request for waiver of formal service." *LSJ Inv.*, 167 F.3d at 322 n.1; Notes of Advisory Committee on 1993 amendments.

[37] The address listed in item 5 of Debtor's Voluntary Petition for Individuals Filing for Bankruptcy under Chapter 13 (Doc. 1) is 795 Willow Bend Dr., Wilmington, OH 45177.

case, No. 24-31855, by certified mail pursuant to the laws of the State of Ohio on January 14, 2025. However, Plaintiff's counsel did not provide a certified mail return receipt number, which is commonplace in Ohio state courts and is required for service by certified mail. *See* Ohio R. Civ. P. 4.1(A)(1)(a).[38] Moreover, if utilizing certified mail service under Ohio law, the "return receipt or returned envelope" shall be filed "in the records of the action." Ohio R. Civ. P. 4.1(A)(2). And neither has been filed in this adversary proceeding. But even if Plaintiff had complied with Ohio law in these regards[39] it would not have resulted in good service on the Debtor because Plaintiff explains in the Response that the certified mail service to the Defendant "was returned as unclaimed by the United States Post Office[.]" Resp. at 2, ¶ 3. Thus, it appears Plaintiff's counsel only filed the Second Certificate of Service on July 14, 2025, three months after it was apparent that the certified mail service described therein had been unsuccessful, as a basis for the assertion that service by regular mail under Ohio Civ. R. 4.6(D) on April 1, 2025 was appropriate.

Plaintiff's counsel filed the Third Certificate of Service (Doc. 8), also on July 14, 2025, again just days after Defendant filed her Amended Motion to Dismiss, to certify that service of the Summons and the Complaint was made on April 1, 2025, "pursuant to the laws of the State of Ohio – Regular Mail" upon Defendant at her address listed in the Petition.[40] The Third Certificate of Service, however, did not state that the certified mail service had been returned unclaimed or provide any proof, such as the returned unclaimed envelope, which is the basis for use of Ohio Civ. R. 4.6(D). And, in any event, by that time the Summons was over two months old (stale) and

[38] Plaintiff does not state whether the certified mail service issued on January 14, 2025, was with a return receipt requested, which is required by Ohio R. Civ. P. 4.1(A)(1)(a).

[39] As listed in the *Piercey* decision, there are a series of documents that are required to sufficiently prove certified mail service by an attorney under Ohio R. Civ. P. 4.1, including "(1) a copy of the cover letter to defendant, if any, which accompanied the Complaint and Summons; (2) an executed return of service, completed by the attorney; and (3) the signed green card, addressed to counsel, which accompanied the documents sent by certified mail, return receipt requested." *Piercey*, 110 F.R.D. at 296. Further, "[c]ounsel must also prepare and file an affidavit to accompany these items." *Id.* And "[t]he affidavit must set forth (1) that the Complaint and Summons were sent, by counsel, to defendant by certified mail, return receipt requested; (2) the date that the documents were sent in this manner; and (3) that the green card was signed and mailed back to counsel." *Id*. Plaintiff's counsel never filed proof of a return receipt requested number for the certified mail service, which would permit tracking of the certified mail service. Further, Plaintiff's counsel never filed a copy of the envelope purportedly returned as "unclaimed."

[40] Had Plaintiff's counsel simply gotten a new summons issued on April 1, 2025 (within the 90-day period under Civil Rule 4(m)) as required by Bankruptcy Rule 7004(e)(1), which takes but a "few keystrokes" in this District, as in other districts, and served that newly issued summons with a copy of the Complaint, pursuant to Bankruptcy Rule 7004(b)(6) and (g) (in the manner reflected in the First Certificate of Service), there likely would be no challenge to service of process and this adversary proceeding would have advanced to the next phase.

could no longer be served pursuant to Bankruptcy Rule 7004(e)(1), regardless of the method of service. Moreover, there is no indication of whether the subsequent service attempted by regular mail was returned, in which case the service would not be effective either. *See* Ohio R. Civ. P. 4.6(D) ("Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the attorney, or serving party.").

As a result, Plaintiff's attempted service under "Ohio – Regular Mail," which counsel now explains was under Ohio Civ. R. 4.6(D), was ineffective from the start, due to use of the stale Summons. In addition, Plaintiff's counsel did not comply with all the steps required for certified mail service under Ohio R. Civ. P. 4.1, which was unsuccessful in any event, or for regular mail service under Ohio R. Civ. P. 4.6(D), to the extent this type of service could ever work in an adversary proceeding in bankruptcy court given the logistics problem discussed below. And this is without even reaching the question raised by Defendant of whether ordinary mail[41] service by an attorney complies "with the technical requirements of Ohio law []or with due process[,]" which in bankruptcy is no question at all under long established practice under Bankruptcy Rule 7004(b) and predecessor Bankruptcy Rule 704.[42] Reply at 12 (quoting *LSJ Inv. Co.*, 167 F.3d at 324). Outside of the peculiar situation in this adversary proceeding, in which Plaintiff's counsel attempted to use Ohio Civ. R. 4.6(D) on April 1, 2025, rather than use Bankruptcy Rule 7004(b)(9)

[41] Ohio case law indicates that "ordinary mail" equates to regular first-class mail. *See Metro. Life Ins. Co. v. Lee*, 126 N.E.3d 249, 2018-Ohio-4915, {¶ 20} (7th Dist.) ("the Ohio Revised Code refers to both 'certified mail' and 'first-class' mail" (citing Ohio Rev. Code § 5721.381(A)) "[a]nd the Ohio Rules of Civil Procedure refer to both certified and first-class mail" (citing Civ. R. 4.6(C) ("referring to both certified and ordinary mail service")).

[42] For purposes of service in an adversary proceeding in bankruptcy court, this is getting pretty far "down the rabbit hole" given that Bankruptcy Rule 7004(b) specifically authorizes service by first-class mail, postage prepaid, within the United States, such that there should never be a need to attempt to utilize Ohio Civ. R. 4.6(D). Service by mail in bankruptcy court pursuant to Bankruptcy Rule 7004(b), which is made by the person to whom the clerk has delivered the summons, pursuant to Bankruptcy Rule 7004(a)(2), time and again, has been found to comport with due process. *See* 10 *Collier on Bankruptcy* ¶ 7004.04 & n.3 (citing *In re Park Nursing Ctr., Inc.*, 766 F.2d 261 (6th Cir. 1985) (decided under former Rule 704(c) and stating that "[w]hat is needed in bankruptcy proceedings is a form of notice which is likely to achieve actual notice in a large volume of cases but is not overly expensive or time consuming.")); *see also* Notes of Advisory Committee ("Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.").

and (g), this is unlikely to be a recurrent issue.[43] Further, the fact that service by first-class mail, postage prepaid, is specifically authorized, in multiple ways, by Bankruptcy Rule 7004(b) significantly undercuts Defendant's adamant assertion that regular mail service by an attorney is inappropriate. And the cases cited by Defendant to assert that issuance of the regular mail was inappropriate actually stand for the proposition that service by the party, in both cases a pro se party, violates Civil Rule 4(c)(2) and is therefore invalid; not that service by the attorney for a party is invalid. Reply at 12 (citing *Thul v. Haaland*, No. 22-5440, 2023 WL 6470733, at *7, 2023 U.S. App. LEXIS 5046, at *7, n.2 (6th Cir. Mar. 1, 2023) (noting that Thul, the pro se plaintiff, had "tried to serve the defendants himself, which is prohibited by Rule 4(c)(2)." (citing *Constien v. United States*, 628 F.3d 1207, 1215 (10th Cir. 2010) ("[E]ven when service by mail is proper, it cannot be a *party* who mails it."))).[44] This is presumably why Defendant follows citation of those cases with the comment that "[e]ven assuming *Plaintiff, by her attorney or otherwise,* mailed the Complaint and Summons to someone, as Plaintiff's filing claims she did, that is not compliance with any of the Rules, which requires the *Clerk* to do so." Reply at 12. But the *Piercey* opinion dispels that notion, as to use of Ohio Civ. R. 4.1(A)(1)(a) via Civil Rule 4(e)(1), and there is no requirement in Bankruptcy Rule 7004 for a clerk to ever serve anything. *See Piercey*, 110 F.R.D. at 295; Fed. R. Bankr. P. 7004(a)(2)(B) ("The clerk may . . . deliver the summons to the person who will serve it."). Thus, while Defendant's counsel may disagree with the policy, he has no basis to disagree with the applicable rules.

Although Civil Rule 4(e)(1) does permit service on an individual within a judicial district in the United States pursuant to "state law for serving a summons in an action brought in courts of general jurisdiction[,]" the fundamental problem in utilizing the Ohio Rules of Civil Procedure is that if the initial certified mail service is refused or unclaimed (or simply lost), or if the return receipt requested—the "green card"—is never returned, it is highly unlikely there would be an ability to serve the same bankruptcy court summons, then stale, pursuant to Rule 4.6(C) or (D) of

[43] Here, it appears that Plaintiff's reliance on Ohio Civ. R. 4.6(D) may have been driven by an effort to craft an argument for valid service of a stale Summons by regular mail; however, it simply does not work because Bankruptcy Rule 7004(e)(1), which limits the time to serve a bankruptcy court summons to 7 days, applies to service "by delivery under Fed. R. Civ. P. 4(e)[,]" which is the provision that authorizes the use of state law. Fed. R. Bankr. P. 7004(e)(1).

[44] Notably, in *Thul* the Sixth Circuit affirmed that this Court "retains discretion to grant an extension to effect service even if the plaintiff does not show good cause." 2023 U.S. App. LEXIS 5046, at *8-9, 2023 WL 6470733, at *8 (citing *United States v. Oakland Physicians Med. Ctr., LLC*, 44 F.4th 565, 568-69 (6th Cir. 2022)).

the Ohio Rules of Civil Procedure.[45] At this point, the Ohio Rules of Civil Procedure and the Bankruptcy Rules on service of process are not logistically reconcilable, which is rooted in the fundamentally different approach to service in bankruptcy, in which the summons is only valid for seven days, not six months, as discussed below. It is practically impossible to re-serve the same bankruptcy court summons, while is still valid, in accordance with Ohio Civ. R. 4.6(C) or (D), unless the initial certified mail service issued in accordance with Ohio Civ. R. 4.1(A)(1)(a) is returned to the attorney as "refused" or "unclaimed" within seven days, before the summons goes stale under Bankruptcy Rule 7004(e)(1). In practice, this rarely, if ever, happens.

In stark contrast to the Bankruptcy Rules, the Ohio Rules of Civil Procedure contain a six-month time limit to serve a summons. *Compare* Ohio Civ. R. 4(E), *with* Fed. R. Bankr. P. 7004(e)(1). And in district court, Civil Rule 4(m) is all that governs the time to serve the summons and complaint. *See* Fed. R. Bankr. P. 4(c)(1) ("The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)"). The Civil Rules do not contain the extra limitation of the seven-day period for validity of a summons, as does Bankruptcy Rule 7004(e)(1). In this regard, the use of the Ohio Rules of Civil Procedure to serve a summons in bankruptcy court differs from use in district court, where the answer date under Civil Rule 12(a) runs from the date of service of the summons, not from issuance of the summons, as it does in bankruptcy court. *See, e.g.*, *HPIL Holding, Inc. v. Zhang*, 734 F.Supp.3d 664, 694-95 (E.D. Mich. 2024) (analyzing service under the Michigan Rules of Civil Procedure, as permitted by Civil Rule 4(e)(1)). In short, the use of Ohio Civ. R. 4.6(C) or (D) to serve a bankruptcy court summons, in practice, will almost never work, and an attempted use of Ohio Civ. R. 4.6(C) or (D) will almost always violate Bankruptcy Rule 7004(e)(1) and result in insufficient service of process of a summons that will warn of an answer period that occurred in the past.[46]

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[45] "Because the response deadline in an adversary proceeding depends on the date of issuance of the summons (rather than service), the Supreme Court adopted a special rule imposing a deadline for serving the summons: seven days after issuance." *MesoHealth, PC v. Soldan* (*In re Soldan*), No. 19-80094, 2020 Bankr. LEXIS 262, at *5 (Bankr. W.D. Mich. 2020) (citing Fed. R. Bankr. P. 7004(e)).

[46] Note that Official Bankruptcy Form B 2500A, issued under Bankruptcy Rule 9009, which "must be used without alteration—unless alteration is authorized by [the Bankruptcy Rules], the form itself, or the national instructions for a particular form[,]" states that the summoned defendant is required to file a motion or answer "within 30 days after the date of issuance of this summons . . . ." And "[i]f you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012." The Instructions for Form B2500A provide, under the heading of Applicable Law and Rules, paragraph 8, that "[w]hen the debtor is a defendant and the debtor is represented by an attorney, the summons and

Under the Ohio Rules of Civil Procedure, when the summons and complaint are re-served by United States ordinary mail, following the return of refused or unclaimed certified mail service, the "[a]nswer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing." Ohio R. Civ. P. 4.6(C) and (D). Again, this conflicts with the Bankruptcy Rules. And there is no provision in Bankruptcy Rule 7004 to make state law applicable to govern the form of the summons or the answer date in an adversary proceeding. Even with respect to service under Civil Rule 4(e)(1), upon which Plaintiff relies, Bankruptcy Rule 7004(e)(1) still applies, such that the summons became stale after 7 days on January 22, 2025. The answer date under Ohio law (Ohio R. Civ. P. 12), similar to the answer date under non-bankruptcy federal law (Civil Rule 12), runs from the date of service of the summons and complaint, not from the date of issuance of the summons, which is fundamentally why the use of Ohio law to serve a bankruptcy court summons can be problematic. When the certified mail is unclaimed or refused, as it often is in practice when service is upon an individual,[47] then there likely is no practical ability to utilize the next step under Ohio law (Ohio Civ. R. 4.6(D)) and the plaintiff's counsel would have to attempt to redo certified mail service or chose another method, such as serving the debtor by first-class mail, postage prepaid, to the address listed on their petition pursuant to Bankruptcy Rule 7004(b)(9), and to the debtor's attorney pursuant to Bankruptcy Rule 7004(g).

To close the loop on Plaintiff's position and Defendant's adamant opposition, both of which miss the mark, the fundamental problem with Plaintiff's argument is that regular (first-class) United States mail service of a stale summons issued by the clerk of a bankruptcy court is not valid due to Bankruptcy Rule 7004(e)(1) and because the Bankruptcy Rule 7012(a) answer date runs from issuance of the summons. This is so regardless of whether that mail service is purportedly issued under Rule 4.6(D) of the Ohio Rules of Civil Procedure, as made applicable by Civil Rule 4(e)(1) and Bankruptcy Rule 7004(a)(1), or under Bankruptcy Rule 7004(b)(9), after expiration of

complaint must be served on both the debtor and the debtor's attorney. Rule 7004(g)." Further, the Instructions discuss Bankruptcy Rule 7004(b)(9) and (g) and note that "[s]ervice on the debtor's attorney may be made by any means authorized by Federal Rule of Civil Procedure 5(b)" which includes "service by electronic means[,]" but only "if the attorney has consented in writing to electronic service." Due to LBR 7004-1(b) and ECF Procedure 2(e), service upon the debtor's attorney by the Court's CM/ECF system does not work for service of a summons and complaint in this District.

[47] "The United States Supreme Court has even recognized the difference, noting 'the use of certified mail might make actual notice less likely in some cases—the letter cannot be left like regular mail to be examined at the end of the day, it can only be retrieved from the post office for a specified period of time.' " *Metro. Life Ins. Co. v. Lee*, 126 N.E.3d 249, 2018-Ohio-4915, {¶ 20} (7th Dist.) (quoting *Jones v. Flowers*, 547 U.S. 220, 235 (2006)).

the Summons, and because it is simply not reconcilable with language of the Summons or Bankruptcy Rule 7012(a). The practical reality is that Ohio Civ. R. 4.6(C) and (D), which would set a different answer date, conflict with Bankruptcy Rules 7004 and 7012 and, in any event, will likely almost never work in practice because it almost always takes more than (and sometimes far, far more than) seven days for certified mail to be returned as unclaimed or refused, such that a bankruptcy court summons has already gone stale and no further attempts at service of that same summons are valid. Thus, a new summons must be issued and, at that point, service under Rule 4.6(C) and (D) is no longer relevant; rather, a plaintiff would be better off (better served) to simply proceed in accordance with Bankruptcy Rule 7004(b)(9) and (g).

Ultimately, if Plaintiff had simply served the original Summons, issued on January 14, 2025, and a copy of the Complaint, upon the Debtor and the Debtor's attorney by first class United States mail by or before January 21, 2025 in the same manner that Plaintiff's counsel later purported to serve the stale Summons on June 3, 2025, following the notice of transfer of this adversary as reflected in the First Certificate of Service (Doc. 3), all of this—the delay and the numerous procedural filings—probably could have been avoided. But as it stands, neither the Debtor nor the Debtor's attorney have been properly served with a summons and a copy of the Complaint. And although it may seem somewhat technical, actual knowledge of a lawsuit is not a substitute for proper procedure. *LSJ Inv. Co.*, 167 F.3d at 322; *see also PNC Mort. v. Rhiel*, Nos. 2:10-cv-578 and 2:10-cv-579, 2011 U.S. Dist. LEXIS 28339, at *9-10 (S.D. Ohio Mar. 18, 2011); *Nelnet*, 2019 Bankr. LEXIS 1836, at *3 (observing that "[p]roper service of the summons and complaint is crucial" and that "improper service may give rise to a due process challenge, resulting in a collateral attack on the judgment under Fed. R. Bankr. P. 9024."). But this is not quite the end of this story of service of process.

C. Extending the Time for Service Under Civil Rule 4(m)

Federal Rule 4(m), made applicable by Bankruptcy Rule 7004(a)(1), states that when "a defendant is not served within 90 days after the complaint is filed" the court must either "dismiss the action without prejudice against that defendant or order that service be made within a specified time." Additionally, if the plaintiff shows good cause for their failure to effectuate proper service, "the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). Ms. Hursey has not argued good cause in her Response and has not requested that the Court reopen

and set a time for service, perhaps because Plaintiff did not want to concede that service of process was insufficient.

Even in the absence of a showing of good cause, a court still has discretion to grant an extension of time for service. *See U.S. v. Oakland Physicians Med. Ctr., LLC*, 44 F.4th 565, 568 (6th Cir. 2022) (citing *Henderson v. U.S.*, 517 U.S. 654, 662 (1996)). The Advisory Committee Notes for the drafting of Federal Rule 4(m) indicate that the drafting of this rule "authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown." Fed. R. Civ. P. 4 Advisory Committee's Notes to 1993 Amendments.[48] Other courts have observed that "[t]he majority rule is that a showing of good cause is not required for the Court to extend the service deadline set by [Civil] Rule 4(m)." *Pepin*, 619 B.R. at 272 (citing 48 Wright & Miller, § 1137, n.13 and accompanying text ("the overwhelming majority of federal courts and dicta from the Supreme Court embrace the view that a district court has discretion under Rule 4(m) to dismiss a complaint or to allow the plaintiff to cure a defect in service of process even in the absence of good cause")).

In the *Oakland* opinion, the Sixth Circuit, observing that it had not previously announced a test, enumerated seven factors for a court to consider when deciding whether to exercise its discretion to extend the time for service under Federal Rule 4(m) "in the absence of a finding of good cause[,]" which are as follows:

> (1) whether an extension of time would be well beyond the timely service of process;
>
> (2) whether an extension of time would prejudice the defendant other than the inherent prejudice in having to defend the suit;
>
> (3) whether the defendant had actual notice of the lawsuit;
>
> (4) whether the court's refusal to extend time for service substantially prejudices the plaintiff, i.e., would the plaintiff's lawsuit be time-barred;
>
> (5) whether the plaintiff had made any good faith efforts to effect proper service of process or was diligent in correcting any deficiencies;

[48] Prior to the 1993 amendments, "[u]nder the old Rule 4(j), courts were required to dismiss a plaintiff's complaint absent a showing of good cause." *Sullivan v. Hall* (*In re Hall*), 222 B.R. 275, 278 (Bankr. E.D. Va. 1998).

> (6) whether the plaintiff is a pro se litigant deserving of additional latitude to correct defects in service of process; and
>
> (7) whether any other equitable factors exist that might be relevant to the unique circumstances of the case.

Oakland Physicians Med. Ctr., 44 F.4th at 569; *see also Moll v. Parker* (*In re Parker*), No. 07-3037, 2007 Bankr. LEXIS 3297, at *7 (Bankr. E.D. Tenn. Sept. 25, 2007) (quoting *Lopez v. Donaldson* (*In re Lopez*), 292 B.R. 570, 576 (E.D. Mich. 2003) (quoting *Slenzka v. Landstar Ranger, Inc.*, 204 F.R.D. 322, 326 (E.D. Mich. 2001))).

In *Vergis v. Grand Victoria Casino & Resort*, it was undisputed that the plaintiff had failed to properly serve the defendant for over four months after filing the complaint. 199 F.R.D. 216, 216 (S.D. Ohio 2000). Nevertheless, the District Court granted a "modest extension of time in which to re-serve the summons and complaint" because refiling under the plaintiff's cause of action would have been barred by statute of limitations, there was no prejudice to the defendant, and extension of time was consistent with the Sixth Circuit's preference to resolve disputes on their merits. *Id*. at 218; *see also Bavelis v. Doukas* (*In re Bavelis*), 453 B.R. 832, 866 (Bankr. S.D. Ohio 2011) (providing "the Debtor 30 days after the entry of this opinion and order to properly serve a correct summons on each of the Qureshi Defendants."). This approach is likewise sensible in this situation.

Working through the seven factors of the test set forth in *Oakland* (the "Oakland Factors"), the Court finds as follows:

(1) Considering that the 90-day period for service under Civil Rule 4(m) expired on April 14, 2025, the extension of time would, at this point, be well beyond the timely service of process and, during the period of time this Court has taken to rule on the Amended Motion to Dismiss, Plaintiff has still not requested an extension of time to complete service; thus, overall, this factor weighs against an extension of time;

(2) An extension of time would not prejudice the Defendant "other than the inherent prejudice in having to defend the suit[.]" And Defendant does not assert any prejudice, other than Pursuant to 11 U.S.C. § 1328(a), the Debtor's discharge in her chapter 13 case is conditioned upon the "completion by the debtor of all payments under" her confirmed Chapter 13 Plan (Case No. 24-31855, Doc. 6), which was

confirmed on January 2, 2025 (Doc. 18) and will not ordinarily complete until 2030 given that Ms. Long is an "above median income" Debtor and allowed nonpriority unsecured claims are being paid 6% under the Agreed Order Prior to Confirmation of the Chapter 13 Plan (Doc. 13); thus, this factor weighs in favor of an extension of time.[49]

(3) By all accounts, there is no dispute that Defendant had actual notice of the lawsuit. In this adversary proceeding in which the Defendant is the Debtor in the related chapter 13 case, either she or her bankruptcy attorney were most likely aware that this adversary proceeding would be filed, or that it was filed, given that Plaintiff's counsel filed a *Notice of Appearance and Request for Service of Papers* (Case No. 24-31855, Doc. 9) in the chapter 13 case on October 18, 2024. Next, the notice of filing the Complaint was sent by the Court's ECF system through the Notice of Electronic Filing ("NEF") email to Debtor's bankruptcy counsel on January 13, 2025 (Case No. 24-31855, Doc. 25). Further, Plaintiff's counsel used the correct home address for Debtor when mailing the Summons and Complaint by first-class mail on April 1, 2025, within the 90-day period. *See* Third Cert. of Serv. (Doc. 8). Moreover, Debtor is represented by litigation counsel in this adversary proceeding who filed a *Notice of Appearance as Counsel for Defendant Sara L. Long* (Doc. 4), the Amended Motion to Dismiss (Doc. 6), the Reply (Doc. 10), the *Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike and alternative Motion to Accept Filing Instanter* (Doc. 14), and the *Defendant's First Motion to Extend Response Time* (Doc. 15); thus, this factor weighs in favor of an extension of time;

(4) Plaintiff's deadline under Bankruptcy Rule 4007(c) to file "a complaint to determine whether a debt is dischargeable under § 523(c)" has long since expired

[49] The Plaintiff has timely filed a non-priority unsecured proof of claim in the amount of $95,619.21. Claim 4-1. Unless and until there were a valid objection to that proof of claim pursuant to 11 U.S.C. § 502(b), the Plaintiff, regardless of whether the Plaintiff's debt is ultimately determined non-dischargeable or not, would receive a 6% dividend [$5,737.15] as a non-priority unsecured creditor if the Debtor completes her confirmed Chapter 13 Plan. *See Agreed Order Prior to Confirmation (Doc. 6)* (Doc. 13). The Debtor's Schedule E/F agrees with the amount of the debt (Est. Doc. 1 at 21) but scheduled it as contingent and disputed. It is not clear what that contingency would be or what is the basis to dispute the debt because the Plaintiff appears to hold a valid state court judgment. *See Decision, Order, and Entry on Damages*, Montgomery Court of Common Pleas, Case No. 2021 CV 03379 (Doc. 1, Ex. 3). In any event, those issues are for another day.

(the last day to file being January 13, 2025, the day this adversary proceeding was filed[50]), such that not extending the time under Civil Rule 4(m) and dismissing this adversary proceeding would preclude Plaintiff from refiling her claims, meaning that those claims would never be decided on their merits, as is the Sixth Circuit's preference. *See Bavelis*, 453 B.R. at 866. Thus, this factor likewise weighs in favor of an extension of time;

(5) Though service was ultimately flawed each time, the first effort to serve the Defendant by certified mail was validly issued, just not effective due to the mail being returned as unclaimed. All told, Plaintiff's counsel asserts that she attempted to serve Ms. Long three separate times. There is no indication from the filings that the service errors were due to bad faith or to gain an advantage at trial. However, it also appears that Plaintiff's counsel was not diligent in attempting to correct deficiencies given that there is no information in the record on when the certified mail service was returned as unclaimed, such as an envelope or a return receipt number, which would enable tracking and a determination of whether the April 1, 2025 effort to serve Debtor by regular mail was diligent. Moreover, the first-class mail service under Bankruptcy Rule 7004(b), issued with a valid alias summons, was not issued until June 3, 2025, which was 50 days after the 90-day period for service under Civil Rule 4(m) expired. The lack of any acknowledgement by Plaintiff's counsel that service of process has been insufficient, and the lack of any request for further time to accomplish service, ultimately weighs against a finding of diligence. And the fact that no Certificate of Service of the Summons was filed until June 4, 2025, out of sequence to the order of service later indicated in the Second and Third Certificates of Service, which other courts have found calls into question the information therein, further weights against a finding of diligence; thus, this factor weighs against an extension of time;

[50] The deadline to file "a complaint to determine whether a debt is dischargeable under § 523(c)[,]" which requires the "creditor to whom such debt is owed" to request that the court determine the debt is excepted from discharge under § 523(a)(2), (a)(4), or (a)(6), is 60 days from the first date set for the meeting of creditors. Fed. R. Bankr. P.4007(c). In this case, the 341 meeting was scheduled for and held on November 12, 2024. Sixty (60) days from that date is January 11, 2025. However, as January 11, 2025 was a Saturday, the deadline was Monday, January 13, 2025. *See* Fed. R. Bankr. P. 9006(a)(1)(C).

(6) Neither of the parties in this case are pro se, such that the sixth Oakland Factor is not applicable; and

(7) In this case, as noted above in conjunction with the second factor, the Debtor has a long road ahead to obtain a discharge in her chapter 13 case, such that allowing this adversary proceeding to proceed on the merits, in accordance with the preference in law for matters to be heard on the " 'merits rather than procedural or technical grounds' " should not delay the resolution of her chapter 13 case. *Bavelis*, 453 B.R. at 866 (quoting *Stafford v. Franklin Cnty., Ohio*, No. 2:04-cv-178, 2005 U.S. Dist. LEXIS 12740, at *10, 2005 WL 1523369, at *3 (S.D. Ohio June 28, 2005)). Further, there is an apparent lengthy history between the Plaintiff and the Debtor, a prior determination that the debt is non-dischargeable, albeit in the chapter 7 bankruptcy of Debtor's former husband, Shawn Long, Case No. 20-32054, by default in Adversary Proceeding No. 21-03014, and there is prior litigation between Plaintiff and the Debtor in the Montgomery County, Ohio Court of Common Pleas, Case No. 2021 CV 03379, in which a judgment was entered against the Debtor, all prior to the Debtor's chapter 13, which, as an equitable matter, indicates that there are potentially substantive claims to be addressed.[51] *See* Complaint at 2-6, ¶¶ 3-22. This weighs in favor of an extension of time.

Overall, although this is a very close call due to the curious timing of the filing of Plaintiff's Certificates of Service (out of order to the alleged service attempts), the ineffective attempts to serve the Summons and Complaint, no acknowledgement that the June 3, 2025 attempted service was well past the Civil Rule 4(m) deadline, no request by Plaintiff's counsel for further time to serve an alias summons and the Complaint, the fact that similar missteps occurred in a prior adversary in which counsel represented the same Plaintiff with regard to the same debt, and the overall delay in prosecution of this adversary proceeding, the slim majority (4 of 7) of the Oakland Factors support a one-time brief extension of time for Plaintiff to complete service in this adversary proceeding. Therefore, because the Court has discretion under Civil Rule 4(m), even absent a showing of good cause by the Plaintiff and because Debtor and Debtor's attorney had actual notice

[51] The Court does not, at this time, opine on the merits of any of Plaintiff's claims or whether those claims are properly asserted; rather, this is purely noted for background within the context of considering the equities of extending the time for service in this adversary proceeding.

of this adversary proceeding within the time for service under Civil Rule 4(m), the Court will *sua sponte* grant the Plaintiff "additional time to properly serve the Defendant[] in accordance with [Bankruptcy] Rule 7004(b)(9) and (g)." *Parker*, 2007 Bankr. LEXIS 3297, at *8. Here, as in *Parker*, the Debtor, as Defendant, does not face any prejudice "other than having to defend the adversary proceeding[,]" which does not factor into the Sixth Circuit's analysis. *Id.*, at *7-8.

V. Conclusion

Just because Plaintiff *could* serve the Summons (Doc. 2) and a copy of the Complaint (Doc. 1) on the Debtor by certified mail under the Ohio Rules of Civil Procedure, as authorized by Civil Rule 4(e)(1), does not mean they should have or, more precisely, that Plaintiff should have relied solely upon this method of service[52] which is prone to being returned as refused or unclaimed (when directed to an individual, as opposed to corporation or an insured depository institution). Further, attempting to utilize ordinary mail service under Ohio Civ. R. 4.6(C) or (D) if the certified mail service is unsuccessful, whether because it is refused, unclaimed, or the green card is "lost in the mail" and never returned, will almost never work in an adversary proceeding in bankruptcy court. And in this case, it was ineffective because the Summons was stale by that time. Moreover, Plaintiff's attempt to make service on June 3, 2025 by first-class mail, although a tried and true method authorized by Bankruptcy Rule 7004(b)(9) and (g), was also ineffective because, again, no new (alias) summons was issued and the 90-day period for service had already expired. At some point, Plaintiff's counsel should have, and could have, obtained and issued an alias summons or asked for more time to do so and effect service. Nevertheless, pursuant to the Court's analysis of the Oakland Factors put forth by the Sixth Circuit, the Court will grant Plaintiff a brief extension of time pursuant to Civil Rule 4(m), for the reasons stated above.

[52] Understandably, attorneys who also practice in Ohio state courts are familiar with certified mail service; however, for the reasons stated herein, while it can be a "belt and suspenders" in the event that certified mail service is accepted, signed for, and the green card is returned and filed on the docket, if the certified mail service is refused or unclaimed, it is likely to be ineffective because the follow-up service by regular mail used in the Ohio state courts under Ohio Civ. R. 4.6(C) and (D) typically will not work with a bankruptcy court summons. Accordingly, service in compliance with Bankruptcy Rule 7004(b)(9) and (g), from the outset, whether stand-alone or in addition to certified mail service, may be the best practice when the defendant is the debtor.

For the foregoing reasons, the Court hereby **ORDERS** that the Amended Motion to Dismiss (Doc. 6) is denied,[53] the Motion to Strike (Doc. 11) is denied given that the Reply was filed only 1 week late and the Court is denying the Motion to Dismiss, the First Motion to Extend Time (Doc. 15) is likewise granted as there is no prejudice to Plaintiff in this situation,[54] and, finally, the time limit for service in this case, as governed by Civil Rule 4(m), is *sua sponte* reopened and extended such that Plaintiff shall make service upon the Debtor, as Defendant, and the Debtor's attorneys within thirty (30) days from the date of entry of this Order. Plaintiff will have the opportunity to obtain the issuance of a new (alias) summons and to properly serve that summons and a copy of the Complaint, within seven (7) days, according to Bankruptcy Rule 7004. This should allow the adversary proceeding to proceed and to be resolved on the merits, which is favored under the law. This adversary proceeding needs to progress on a more expedited track than it has so far.

IT IS SO ORDERED.

Copies to:

Counsel for the Plaintiff
Counsel for the Defendant

[53] Defendant, in a footnote, asked for alternative relief if the Motion to Dismiss is denied for "leave to file a separate motion for judgment on the pleadings, or for failure to state a claim, under Fed. R. Civ. P. 9(b) . . . and/or 12(b)(6) . . ." Mot. to Dismiss at 5, n.2. Civil Rule 12(g)(2) provides that "[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." Fed. R. Civ. P. 12(g)(2) (made applicable by Fed. R. Bankr. P. 7012(b)). However, subdivision (h)(2) of Civil Rule 12 provides that "[f]ailure to state a claim upon which relief can be granted . . . may be raised: . . . (B) by a motion under Rule 12(c)[,]" which is a motion for judgment on the pleadings. Fed. R. Civ. P. 12(h)(2)(B). The substance of such a motion is the same as a Civil Rule 12(b)(6) motion (that may also include arguments pursuant to Civil Rule 9(b)). Therefore, Defendant does not need "leave" to later move for judgment on the pleadings in which it could raise failure to state a claim upon which relief can be granted. *See Senterra Ltd. v. Rice Drilling D, LLC*, No. 2:24-cv-3181, 2025 WL 2958658, at *2, 2025 U.S. Dist. LEXIS 206055, at *5-6 (S.D. Ohio Oct. 20, 2025) ("In examining a Rule 12(c) motion, the Court uses the same standard of review applied to a Rule 12(b)(6) motion to dismiss for failure to state a claim." (citing *Mixon v. State of Ohio*, 193 F.3d 389, 399-400 (6th Cir. 1999)); *see also Lindsay v. Yates*, 498 F.3d 434, 438 (6th Cir. 2007) (observing that "[t]he same standards apply . . . under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim [and] under Rule 12(c) for judgment on the pleadings." (citing *EEOC v. J.H. Routh Packaging Co.*, 246 F.3d 850, 851 (6th Cir. 2001)).

[54] Because the Court has independently determined from the record of this adversary proceeding that service of process has been insufficient so far, and the Court has *sua sponte* extended the time for service, there is no prejudice to Plaintiff by virtue of the Court's consideration of the belated Reply. Moreover, consideration of the Reply is appropriate given that the Court has, *sua sponte*, determined to give Plaintiff more time to serve process.