

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**JAMES V. SWINNIE,**

**Plaintiff,**

**v.**

**Case No.: 8:18-cv-407-T-23AAS**

**COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

\_\_\_\_\_ /

**ORDER**

James V. Swinnie requests the court enter default judgment against the Commissioner of Social Security (the “Commissioner”) for failing to timely respond to the complaint. (Doc. 7).

As an initial matter, a clerk’s default, not default judgment, would be the appropriate request for relief when a properly served summons and complaint is not answered in the time prescribed by the rules. *See* Fed. R. Civ. P. 55(a). In any event, the Commissioner was not properly served. In accordance with Fed. R. Civ. P. 4(i)(1), (2), Mr. Swinnie must serve the summons and complaint on the Attorney General of the United States, the U.S. Attorney for the Middle District of Florida, and the Acting Commissioner of Social Security.

Mr. Swinnie “is responsible for having the summons and complaint served within the time allowed by Rule 4(m) . . .” Fed. R. Civ. P. 4(c)(1). Service of the summons and complaint must be made with ninety days after the filing of the complaint. Fed. R. Civ. P. 4(m). The court previously warned Mr. Swinnie that litigating in federal court is difficult and he is subject to the same law and rules as a litigant represented by counsel. (Doc. 5). However, Mr. Swinnie will be granted a brief extension to properly serve the Commissioner.

Accordingly, it is **ORDERED** that Mr. Swinnie's Motion for Default Judgment (Doc. 7) is **DENIED**. No later than **July 2, 2018**, Mr. Swinnie must properly serve the Commissioner and file a notice of service. Otherwise, this action will be dismissed for failure to conduct proper service and prosecute.

**ORDERED** in Tampa, Florida on this 8th day of June, 2018.



---

AMANDA ARNOLD SANSONE  
United States Magistrate Judge

Copies to:

James V. Swinnie  
8007 Moccasin Tr Dr.  
Riverview, FL 33578