

FILED

SEP 05 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
14-SO-02

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY BRH DEP CLK

IN RE:)
PROCEDURES FOR SERVICE OF)
PROCESS IN STATE PRISONER) **ORDER**
CIVIL RIGHTS CASES PURSUANT)
TO 28 U.S.C. § 1915(d))

This Standing Order memorializes an agreement this court has reached with the North Carolina Department of Public Safety (“DPS”) concerning service of process in state prisoner civil rights cases. Whenever the court reviews “a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee” of DPS pursuant to 28 U.S.C. § 1915A and allows any portion of the complaint to proceed, 28 U.S.C. § 1915(d) “specifically vests the responsibility for service with the court and its officers.” Jones v. Hashagen, 419 F. App’x 141, 145 (3d Cir. 2011) (per curiam) (unpublished); see Laurence v. Wall, 551 F.3d 92, 93 (1st Cir. 2008) (per curiam); Olsen v. Mapes, 333 F.3d 1199, 1204 (10th Cir. 2003). In this district, the court provides summonses and the complaint to the United States Marshal Service (“USMS”) to send to defendants by certified mail. See Fed. R. Civ. P. 4(c)(3).

Since 2011, the court has observed a sharp increase in USMS service attempts that initially fail. Approximately one-third of all summonses and complaints sent by certified mail from the USMS to state defendants at their purported work addresses have been returned to the court unexecuted. The court then must make further efforts to identify and serve defendants, which includes seeking a response from the North Carolina Attorney General and DPS and reissuing summonses for further service attempts. These efforts delay resolution of cases and interfere with the court’s “strong preference that, as a general matter, defaults be avoided and that claims and

defenses be disposed of on their merits.” Colleton Prep. Acad., Inc. v. Hoover Universal, Inc., 616 F.3d 413, 417 (4th Cir. 2010).

In an effort to promote judicial efficiency and conserve state and federal resources, the court and USMS met with DPS officials and devised a plan to facilitate service of process. This order memorializes that plan. The court therefore ORDERS as follows:

1. This order applies only to civil rights actions filed by North Carolina state prisoners against current and former DPS employees.

2. When the court allows any portion of a state prisoner’s civil rights case to proceed past frivolity review and directs the clerk to maintain management of the action, the clerk shall prepare and file requests for waivers of service for all remaining defendants and transmit electronic copies of the requests for waiver of service, the complaint, and the order to continue management to an email inbox designated by DPS. A DPS employee shall acknowledge receipt of the transmission by a return email by 5:00 p.m. on the following business day.

3. DPS shall have sixty days from the filing of the request for waiver of service to respond to the transmission. DPS then will undertake a good-faith effort to further identify defendants where needed (for example, when the prisoner has misspelled a defendant’s last name or is unable to fully name a defendant) and to procure defendants’ signatures on the waivers of service. Additionally, the North Carolina Attorney General shall use this time to commence its determination concerning whether to undertake representation of any of the defendants pursuant to the Defense of State Employees Act.

4. When DPS has obtained a defendant’s waiver of service, DPS or the North Carolina Attorney General shall file the waiver with the court, under seal if necessary. Any defendant who files a waiver of service pursuant to this standing order shall have sixty days from the date of the

filing of the waiver to answer or otherwise respond to the complaint unless otherwise ordered by the court.

5. Where DPS cannot procure a defendant's waiver of service for any reason, such as a defendant who is no longer a DPS employee, DPS or the North Carolina Attorney General shall file a response that either provides the court with the full name and last known address of the defendant, or informs the court that no such address is available and describes DPS's efforts to obtain the information. DPS or the Attorney General may provide the information under seal if necessary, and the court will disclose the information only to anyone engaged in providing service of process.

SO ORDERED. This 5 day of September 2014.



JAMES C. DEVER III
Chief United States District Judge