

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE: STANDING ORDER ADDRESSING SERVICE OF PROCESS
 IN CASES WHERE PLAINTIFF IS PROCEEDING IN FORMA PAUPERIS**

Due to the change in Fed.R.Civ.P. 4, which was effective December 1, 1993, the undersigned Magistrate Judges are entering this standing order regarding service of process on defendants when a plaintiff has been granted leave to proceed in forma pauperis under 28 U.S.C. §1915.¹ This order supersedes the previous standing order dated June 27, 1990. Based upon the prior success and ease with which service of process was perfected in actions where the plaintiff was proceeding in forma pauperis through the use of the standing order dated June 27, 1990, aspects of the Court's previous standing order will be incorporated into the new procedures established herein. It is therefore **ORDERED** that in those actions where a plaintiff is proceeding in forma pauperis under 28 U.S.C. §1915, thereby causing the Court to be responsible for service of process, the procedure for perfecting service shall be as follows:

1. Receipt of Complaint. Once the complaint is received in the Clerk's Office, the Clerk shall examine the complaint to ensure that:
 - a. Included with plaintiff's complaint is a motion to proceed without prepayment of fees and costs or other pleading requesting leave to proceed in forma pauperis; and
 - b. The complaint is signed by the plaintiff or the plaintiff's attorney and the signer's address and telephone number, if any, are provided, as required by Fed.R.Civ.P.. 11(a), and the motion to proceed without prepayment of fees and costs or other pleading requesting leave to proceed in forma pauperis is signed by the plaintiff.

If the Clerk finds plaintiff's filing to be deficient in any of these areas, the Clerk shall annex the deficient documents to the form order addressing deficient documents, Exhibit 1, and present the order and deficient documents to a magistrate judge for the magistrate judge's review. Once an order concerning the deficient documents is executed by the magistrate judge, the Clerk shall handle the documents according to the tenor of the order.²

¹ It is provided in 28 U.S.C. §1915 (c) that "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases."

² Local Rule 21, which governs pro se civil rights and habeas filings, mandates that pro se actions brought by inmates under 42 U.S.C. §1983 and. 28 U.S.C. §§2254 and 2255 be filed on the

2. Filing. When a complaint and a motion to proceed without prepayment of fees and costs (or request to proceed in forma pauperis) are received and determined by the Clerk not to be deficient by the criteria set out above, the complaint and accompanying documents or pleadings shall be filed, docketed, and referred to the appropriate magistrate judge for a ruling.

3. Habeas Actions Under 28 U.S.C. §§2241 and 2254. In a habeas action, the Court will enter an order ruling upon petitioner's motion to proceed without prepayment of fees and costs and generally will order the respondent to show cause why the writ of habeas corpus should not issue. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that the respondent and the involved state's attorney general shall be served a copy of the petition and the Court's show cause order by certified mail. The change in Fed.R.Civ.P. 4 does not affect the serving of a habeas petition.³

4. Order Commencing the Action. Once the Court has ruled upon the plaintiff's motion to proceed without prepayment of fees and costs (or request to proceed in forma pauperis), an order will issue requiring:

- a. Certain defendants be sent (1) the Notice of Lawsuit and Request for Waiver of Service of Summons form (hereinafter "notice and request"); (2) two Waiver of

complaint or petition forms provided by the Court and requests to proceed in forma pauperis be filed on the Court's form, and that all forms be completely filled out and signed. Local Rule. 21 provides that the complaint not be filed if the foregoing provisions are not met, unless the Court orders otherwise.

However, Fed.R.Civ.P. 5(e), which was implemented on December 1, 1991, well after Local Rule 21 was adopted, restricted the Clerk's functions when it stated: "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices." Since the implementation of Rule 5(e), which contradicts Local Rule 21, in part, and the lack of clarity between "form" and "substance," the Court has informally used the procedure that is set out above, with the Court, after a case is filed, determining whether a plaintiff needs to complete the Court's form for a complaint or petition under 42 U.S.C. §1983 or 28 U.S.C. §§2254 and 2255, respectively, or for a motion to proceed without prepayment of fees and costs, and entering an order requiring such. The Court, in utilizing this procedure, nonetheless, realizes that Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts requires that a petition under 28 U.S.C. §2254 shall be in substantially the same form as that which is annexed to the rules except that local rules may mandate that the petition be filed on a form adopted by the district court.

³ Rule 11 of the Federal Rules Governing Section 2254 Cases in the United States District Courts permits the application of the Federal Rules of Civil Procedure to habeas actions only to the extent that they are not inconsistent with habeas rules.

Service of Summons forms (hereinafter “waiver”); (3) the complaint; (4) the order commencing the action; and (5) the prepaid means for returning the waiver; and/or

- b. Other defendants to whom the waiver provisions are not applicable be served with process; and/or
- c. The documents identified by the numbers 1 through 4 in paragraph 4(a) be sent for all the defendants in one action who are located at one Alabama Department of Corrections’ institution in the Southern District of Alabama in a packet to a person who is located at that institution and has agreed to deliver documents 1 through 4 to the named defendants for the Court.⁴

5. Waiver. The Clerk shall then prepare the notice and request and the waiver as well as the other accompanying documents for each defendant for whom the Court requests this be done. Fed.R.Civ.P. 4(d). A sample form for the notice and request and for the waiver is attached hereto as Exhibits 2 and 3, respectively.

a. Defendants Who Are Subject to the Waiver Provisions of Rule 4.

- i. In the instance when a defendant is an employee of the Alabama Department of Corrections and he or she is employed at an institution of the Alabama Department of Corrections that is located in the Southern District of Alabama, there is a person at that institution who has agreed to deliver to each defendant the notice and request form, two waiver forms, the complaint, and the order commencing the action, and to return to the Court the signed waiver form(s) in the prepared prepaid means that the Court has sent to him with the documents to be delivered to the defendant(s).⁵ Attached to the order as Exhibit 4 is a list of those persons who have agreed to perform this function and their addresses.
- ii. There are other defendants in in forma pauperis actions who are not employed at an institution operated by the Alabama Department of Corrections in the Southern District of Alabama. These defendants, e.g., jail officials, police officers, county law enforcement officials, Alabama Department of Corrections’ officials employed

⁴ After carefully considering the new provisions of Rule 4, the Court is of the opinion that one of its overriding concerns is the costs associated with service of process. The Court therefore determined that the new waiver provisions of Rule 4 should be implemented first in regard to certain defendants.

⁵ This procedure seeks to utilize the procedure that previously was in place, which was very reliable, where these persons acted as specially-appointed process servers and served the defendant prison officials at their respective institutions.

in other districts, city or county officials, etc., shall be sent by first-class mail the notice and request form, two waiver forms, the complaint, the order commencing the action, and the prepaid means for returning the signed waiver form. Fed.R.Civ.P. 4 (d).

- b. Waiver Procedures. A defendant whose address is within any judicial district of the United States has 33 days⁶ to return to the Court the executed waiver form. The Clerk shall refer to the appropriate magistrate judge the Court's file in which a defendant has not filed an executed waiver form within the prescribed time. Upon receipt of the Court's file, the magistrate judge will enter an order causing the summons to issue by the Clerk and directing the U.S. Marshal to effect service of process on the defendant who did not waive service of process,⁷ if applicable.⁸

6. Defendants Who Are Not Subject to the Waiver Provision of Rule 4, and Service of Process on Those Defendants. The waiver provisions of Rule 4 do not apply to defendants that are the United States, and its agencies, officers, or corporations; states; municipal corporations; or other governmental organizations. Fed.R.Civ.P. 4(d)(2),(i),(j). Service upon the United States and its agencies, officers, and corporations shall be made, in the first instance, "by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney ...[,]" Fed.R.Civ.P. 4 (i)(1)(A), and in accordance with the other requirements of Fed.R.Civ.P. 4 (i)(1). Service of process on a state, municipal corporation, or other governmental organization, e.g., the City of Mobile, Mobile City Council, Mobile County, Mobile County Commission, etc., which are located in Alabama, shall be made initially by serving the summons and complaint by certified mail, return receipt requested, with instructions to the postal employee to forward, to show to whom delivered, where it was delivered, and the date of delivery. Fed.R.Civ.P. 4 (j)(2); Ala.R.Civ.P. 4.1 (c)(2). Service of process is perfected on these local governmental entities and the State by serving a certain officer or person as set out by Ala.R.Civ.P. 4 (c)(9) - (13); the officer or person to be served varies according to the entity being sued.

Should service of process not be perfected by the first method, the Court's file should be referred to the appropriate magistrate judge for review. At that time, the magistrate judge will enter an order causing the Clerk to reissue the summons and directing the U.S. Marshal to serve the defendant personally.

⁶ A three-day period has been added to the minimum 30-day period since the defendant is required to act only after he receives the forms and the other documents through the mail. Fed.R.Civ.P. 6(e). The notice and request form instructs the defendant to return the executed waiver within 30 days after the date on which the notice and request form was sent.

⁷ The cost of service of process will be imposed against the defendant who did not execute the waiver form, unless good cause is shown for the failure. Fed.R.Civ.P. 4(d)(2).

⁸ In some instances, there may be evidence that the defendant's address is not a good one. The magistrate judge at that time may order the plaintiff to provide a better address for the defendant.

The Clerk shall prepare the summons and issue process. Fed.R.Civ.P. 4(b). Attached hereto as Exhibit 5 is the summons form.

SIGNED AND ORDERED this 1st day of February, 1994.

/s/

WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

/s/

BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE

/s/

WILLIAM H. STEELE
UNITED STATES MAGISTRATE JUDGE

**U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED THIS THE
1st DAY OF February, 1994**

Judgement Entry No. 2933 - A

DEBORAH S. HUNT, CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA**

IN RE: _____

ORDER ON DEFICIENT DOCUMENTS

The Clerk has received your _____
dated _____. The Court, however, finds that it is deficient in the area(s) checked below.

1. ___ Document was not accompanied by the required filing fee of \$120.00, see 28 U.S.C. §1914, or a motion to proceed without prepayment of fees and costs, see 28 U.S.C. §1915(a). This Court's form for a motion to proceed without prepayment of fees and costs is enclosed herewith for your use, if needed.

2. ___ The document noted below has not been signed. See Fed.R.Civ.P. 11.

 ___ Complaint

 ___ Motion to Proceed Without Prepayment of Fees and Costs

 ___ Other _____.

3. ___ Other: _____

The Clerk is **DIRECTED** to return the deficient document(s) to the plaintiff, who shall have 20 days from the date of this order to correct any deficiency noted. Failure to return the document(s), with the deficiency or deficiencies corrected, within the prescribed time will result in the document(s) being deemed stricken pursuant to Fed.R.Civ.P. 11.

The Clerk is further **DIRECTED** to ensure that there is a date-stamp reflecting the date of receipt on the document(s) to be returned in order to preserve the earliest possible filing date and to make a copy of the document(s), together with a copy of this order, for retention in a suspense file until such time as the original is returned or until the expiration of the time allowed by this order, whichever occurs first.

IT IS SO ORDERED.

DATED at Mobile, Alabama this the _____ day of _____ 19____.

EXHIBIT 1

UNITED STATES MAGISTRATE JUDGE
