

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Aerick Wayne Shorty v. J. Hill, et al.

Case No. 25cv656-RBM (MSB) · No. 25cv656-RBM (MSB) · Decided July 29, 2025

SUMMARY

The United States District Court for the Southern District of California denied without prejudice a state prisoner’s request for service by a U.S. Marshal because he was not proceeding in forma pauperis and had not attempted service by other authorized means. The court reissued summonses for the remaining defendants and directed the Clerk to provide waiver-of-service forms and copies of the complaint. The court extended the service deadline to October 1, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael S. Berg
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 29, 2025
DOCKET	25cv656-RBM (MSB)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se in a 42 U.S.C. § 1983 action, requested that the court order service of process by a United States Marshal. The district court denied the request without prejudice and directed the Clerk to reissue summonses and provide waiver-of-service forms.
STANDARD OF REVIEW	The court exercised discretion under Federal Rule of Civil Procedure 4(c)(3) in determining whether to order service by a United States Marshal.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district court order
PARTIES	Aerick Wayne Shorty v. J. Hill, et al.

TOPICS

- service of process
- prisoners rights
- civil rights
- civil procedure

PRACTICE AREAS

Civil procedure

Prisoner civil rights

QUESTIONS PRESENTED

1. Whether a plaintiff who paid the filing fee and did not proceed in forma pauperis was entitled to service by a United States Marshal under Federal Rule of Civil Procedure 4(c)(3).
2. Whether Plaintiff's incarceration and alleged difficulty arranging service justified ordering U.S. Marshal service without a prior attempt at service by other authorized means.
3. What time period Plaintiff had to effectuate service after completion of screening.

HOLDINGS

1. A plaintiff who pays the filing fee is generally responsible for effectuating service, and service by a United States Marshal under Rule 4(c)(3) is discretionary rather than automatic.
2. A fee-paying plaintiff seeking U.S. Marshal service must first attempt service by other means authorized by Rule 4, or explain the efforts made and why Marshal service is necessary.
3. Plaintiff had ninety days from completion of the screening process to effectuate service, making the deadline October 1, 2025.

KEY QUOTATIONS

"In exercising this discretion, courts have been mindful that Congress amended Rule 4 'primarily to relieve United States marshals of the burden of serving summonses and complaints in private civil actions.'" (at 2)

"the plaintiff is expected first to seek service by private means whenever feasible rather than impose the burden on the Marshals Service" (at 2)

FACTUAL BACKGROUND

Aerick Wayne Shorty, a state prisoner proceeding pro se, brought a civil rights action under 42 U.S.C. § 1983 and paid the required filing fee. The court screened his complaint, found plausible First and Eighth Amendment claims, and directed service on A. Ramirez and E. Estrada. Shorty requested U.S. Marshal service because he was confined at R.J. Donovan, where the events occurred and the defendants were employed, but he did not identify any prior attempt to serve the defendants by other authorized means.

PROCEDURAL HISTORY

Plaintiff filed a civil rights complaint and paid the filing fee rather than proceeding in forma pauperis. After screening the complaint under 28 U.S.C. § 1915A, the court dismissed certain claims and defendants, authorized claims against A. Ramirez and E. Estrada, and directed Plaintiff to serve them. Plaintiff then requested U.S. Marshal service, asserting that his incarceration made service difficult. The court denied that request without prejudice, extended the service period to ninety days from the Screening Order, and directed the Clerk to reissue summonses and provide waiver forms.

DISPOSITION

other

CASES CITED

- Boudette v. Barnette, 923 F.2d 754, 757 (9th Cir. 1991)
- Bax v. Executive Office for U.S. Attorneys, 216 F.R.D. 4, 4 (D.D.C. 2003)
- Lovelace v. Acme Mkts., Inc., 820 F.2d 81, 83 (3d Cir. 1987)
- Raiser v. United States Dist. Ct. for S. Dist. of California, No. 20-CV-1490 TWR (AGS), 2021 WL 4895217, at *2 (S.D. Cal. Feb. 26, 2021)
- Cathy v. Palma, No. 322CV01565GPCJLB, 2023 WL 322495, at *3 (S.D. Cal. Jan. 19, 2023)
- Butler Nat'l Cmty. Renaissance of California, 766 F.3d 1191, 1204 n.8 (9th Cir. 2014)

OPINION

Shorty v. Hill

PER CURIAM.

2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 AERICK WAYNE SHORTY, Case No.: 25cv656-RBM (MSB) 11 Plaintiff,

ORDER DENYING REQUEST FOR SERVICE

12 v. BY A U.S. MARSHAL [ECF NO. 8]

13 J. HILL, et al., 14 Defendants. 15 16

17 I. BACKGROUND

Plaintiff AERICK WAYNE SHORTY is a state prisoner proceeding pro se in this civil 18 rights action brought pursuant to 42 U.S.C. § 1983. (See ECF No. 1.) Plaintiff is not 19 proceeding in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a)—he has instead 20 paid the \$405 civil and administrative filing fee required by 28 U.S.C. § 1914(a). (See ECF 21 No. 4, Receipt No. 160348.) On July 2, 2025, the Court screened Plaintiff’s Complaint as 22 required by 28 U.S.C. § 1915A and found that Plaintiff alleged plausible First and Eighth 23 Amendment claims. (See ECF No. 5 at 6–7 (hereinafter, “Screening Order”).) After 24 dismissing certain claims and defendants, the Court directed the Clerk to issue a 25 summons upon Defendants A. Ramirez and E. Estrada (collectively, “Defendants”) under 26 Fed. R. Civ. P. 4(b). (Id. at 7–8.) The Court also ordered Plaintiff to file proof of service 27 2 failure to do so would result in his case being dismissed without prejudice for failing to 3 timely prosecute pursuant to Fed. R. Civ. P. 4(m). (Id.) 4 Presently before the Court is Plaintiff’s request for service by a U.S. Marshal. (ECF

5 No. 8.) In it, Plaintiff explains that he is “willing and able to pay the process server” but

6 is “confined at R.J. Donovan, where the events giving rise to the action occurred and the 7

Defendants are employed, making it difficult to serve the litigation coordinator on their behalf.” (Id. at 1.)

9 II. REQUEST FOR U.S. MARSHAL SERVICE

10 Generally, a plaintiff who files a civil action and pays the filing fee is responsible 11 for effectuating service of process. See *Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 12 1991). Rule 4(c)(3) of the Federal Rules of Civil Procedure provides that, “[a]t the 13 plaintiff’s request, the court may order that service be made by a United States marshal 14 or deputy marshal or by a person specially appointed by the court.” Fed. R. Civ. P. 15 4(c)(3). “In exercising this discretion, courts have been mindful that Congress amended

16 Rule 4 ‘primarily to relieve United States marshals of the burden of serving summonses 17 and complaints in private civil actions.’” *Bax v. Executive Office for U.S. Attorneys*, 216 18 F.R.D. 4, 4 (D.D.C. 2003) (quoting *Lovelace v. Acme Mkts., Inc.*, 820 F.2d 81, 83 (3d Cir. 19 1987)). 20 According to the Congressional record, “the plaintiff is expected first to seek 21 service by private means whenever feasible rather than impose the burden on the 22 Marshals Service;” thus, court orders directing U.S. Marshal service “should not be 23 issued unless they really are necessary.” 96 F.R.D. 81, 127 (1983). Courts in this district 24 have held that a plaintiff requesting service by the U.S. Marshal must first attempt 25 service by other means authorized by Rule 4. See, e.g., *Raiser v. United States Dist. Ct. 26 for S. Dist. of California*, No. 20-CV-1490 TWR (AGS), 2021 WL 4895217, at *2 (S.D. Cal.

27 Feb. 26, 2021) (denying motion for U.S. Marshal service where plaintiff was not 2 other means”). 3 Plaintiff has not articulated any attempt at service. Instead, he states that he is 4 willing and able to pay for service, but his confinement at R.J. Donovan is an obstacle. 5 (ECF No. 8 at 1.) Although the Court recognizes that Plaintiff’s incarceration poses some 6 barriers to properly serving his complaint, his status is not an absolute bar to properly 7 serving the Defendants. See, e.g., *Cathy v. Palma*, No. 322CV01565GPCJLB, 2023 WL 8 322495, at *3 (S.D. Cal. Jan. 19, 2023) (denying motion for U.S. Marshal service where 9 plaintiff was not proceeding IFP and did not articulate what attempts he had taken to 10 serve defendants by alternate means before seeking assistance from the Marshal). For 11 example, Plaintiff can certainly attempt to have a qualified non-party serve Defendants 12 without the Court’s intervention (see Fed. R. Civ. P. 4(c)(2)), and he must explain any 13 such attempt before renewing his request. 14 Because Plaintiff is not proceeding IFP and has not discussed any steps he has 15 taken to effectuate service, the Court DENIES Plaintiff’s Request for Service by a U.S. 16 Marshal without prejudice to any future requests.1

17 III. TIME TO EFFECTUATE SERVICE

18 The Court originally ordered Plaintiff to personally serve Defendants within thirty 19 days of the Screening Order, which means Plaintiff would have to effectuate service by 20 July 31, 2025. Plaintiff made this motion for service by a U.S. Marshal within eighteen 21 days of the Order, but the Court had not entered it on the CM/ECF system until July 22, 22

2025. (See ECF No. 8.) Because the Court is denying Plaintiff's request for U.S. Marshal service, it seems unlikely that Plaintiff will have served Defendants by the current deadline. The Court recognizes that Fed. R. Civ. P. 4(m) allows Plaintiff ninety days to effectuate service, and case law generally tolls that deadline until after screening, pursuant to 28 U.S.C. § 1915A, is complete. (See Screening Order at 3 n. 3 (citing *Butler 2 Nat'l Cmty. Renaissance of California*, 766 F.3d 1191, 1204 n.8 (9th Cir. 2014).) Accordingly, Plaintiff shall have ninety days from the Screening Order to effectuate service, which shall be by October 1, 2025. Because Plaintiff still has about two months to either serve Defendants on his own or renew his Request after he has made a sufficient attempt at service, the Court will not provide any further extensions at this time. However, should Plaintiff eventually need an extension, Plaintiff must timely request it, or his claims may be dismissed without prejudice, as provided by Fed. R. Civ. P. 4(m).

IV. CONCLUSION

1. Plaintiff's Request for Service by a U.S. Marshal is DENIED without prejudice. To assist Plaintiff in service of process in this case, the Court DIRECTS the Clerk of the Court to re-issue a summons upon Defendants A. Ramirez and E. Estrada under Fed. R. Civ. P. 4(b), and forward them to Plaintiff together with three copies of his Complaint [ECF No. 1] and three blank AO 399 Waiver of Service of Summons Forms so that Plaintiff may notify Defendants that an action has been commenced against them and request each Defendant waive personal service pursuant to Fed. R. Civ. P. 4(d). 2. The Court notes that if a Defendant located within the United States fails, without good cause, to sign and return a waiver that Plaintiff properly requests, the Court may impose upon that Defendant the expenses later incurred in making personal service. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3), (d)(2). IT IS SO ORDERED. Dated: July 29, 2025 = _2 3s Honorable Michael S. Berg United States Magistrate Judge