

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PRECEDENTIAL VALUE	Unpublished, nonprecedential district court order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)

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