

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MISSOURI, EASTERN DIVISION

Rex S. Gunther v. Patty Washburn, et al.

No. 4:26-cv-00272-JMD (E.D. Mo. Mar. 2, 2026) · No. 4:26-cv-00272-JMD · Decided March 2, 2026

SUMMARY

The court addresses service of process after plaintiff paid the full filing fee in a civil action. The order describes three service options, requires service within the applicable deadline, and warns that failure to timely serve defendants may result in dismissal without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of Missouri, Eastern Division
WRITING FOR THE COURT	Joshua M. Divine
JURISDICTION	United States District Court for the Eastern District of Missouri, Eastern Division
DECIDED	March 2, 2026
DOCKET	4:26-cv-00272-JMD
DISPOSITION	other
PROCEDURAL POSTURE	After plaintiff paid the full filing fee in this prisoner civil-rights action, the district court issued a memorandum and order addressing plaintiff's responsibility for serving defendants and setting a service deadline.
STANDARD OF REVIEW	The court applied the discretionary good-cause standard governing a request for service by a United States marshal or other court-appointed person under Federal Rule of Civil Procedure 4(c)(3).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Rex S. Gunther v. Patty Washburn, et al.

TOPICS

- service of process
- civil procedure

PRACTICE AREAS

- civil procedure
- prisoner civil rights

QUESTIONS PRESENTED

1. Who was responsible for serving defendants after plaintiff paid the full filing fee?
2. What methods could plaintiff use to effect service under Federal Rule of Civil Procedure 4?
3. What showing was required for court-authorized service by a United States marshal or other specially appointed person?
4. What deadline governed service, and what consequence would follow from an untimely failure to serve?

HOLDINGS

1. Because plaintiff paid the full filing fee, plaintiff—not the court or the United States Marshals Service—was responsible for effecting service on defendants under Federal Rule of Civil Procedure 4.
2. The court has discretion to grant or deny a request under Federal Rule of Civil Procedure 4(c)(3) for service by a United States marshal, deputy marshal, or specially appointed person, and plaintiff must show good cause for such relief.
3. Plaintiff was required to effect service no later than 90 days after the complaint was filed or 30 days after the order, whichever was later; absent good cause, failure to timely serve would result in dismissal of the claims against the unserved defendants without prejudice.

KEY QUOTATIONS

“Because plaintiff paid the full filing fee, neither the Court nor the United States Marshal Service must perform service of process.” (1)

“The Court has “discretion” to grant or deny this motion.” (1)

“failure to timely serve said defendants shall result in the dismissal of plaintiff’s claims as to said defendants without prejudice.” (2)

FACTUAL BACKGROUND

Plaintiff paid the full \$405 filing fee. Because he paid the full fee, the court determined that plaintiff was responsible for serving the defendants and explained methods for service by private process server, waiver, or court-authorized marshal service.

PROCEDURAL HISTORY

Plaintiff paid the full \$405 filing fee. The court therefore directed that plaintiff, rather than the court or the United States Marshals Service, arrange service under Federal Rule of Civil Procedure 4, while describing available service options and setting a deadline.

DISPOSITION

other

CASES CITED

- Yates v. Baldwin, 633 F.3d 669, 672 (8th Cir. 2011)
- Christians v. Hanvey, 4:23-CV-04137-LLP, 2024 WL 5293192, at *2 (D. S.D. Dec. 11, 2024)

OPINION

EASTERN DISTRICT OF MISSOURI EASTERN DIVISION REX S. GUNTHER,)) Plaintiff,)
) v.) No. 4:26-cv-00272-JMD) PATTY WASHBURN, et al.,)) Defendants.) MEMORANDUM
 AND ORDER This matter is before the Court upon plaintiff's payment of the full \$405 filing fee.

Because plaintiff paid the full filing fee, neither the Court nor the United States Marshal Service must perform service of process. Plaintiff is responsible for serving the defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure. Listed below are several options for service of process. Plaintiff must follow one of these options: Option I: Plaintiff must serve defendants with summonses.

To do so, plaintiff must submit to the Court for each of these defendants: i) a file-stamped copy of his complaint; ii) two (2) completed summons forms (AO Form 440); and iii) two (2) completed "Notice of Intent to Use Private Process Server" forms.

The "Notice of Intent to Use Private Process Server" form must include the name and address of the process server who will be effectuating service upon defendants. Plaintiff must complete these forms and return them to the Clerk's Office. Once plaintiff submits these forms, the Clerk's Office will sign and seal his summonses and return them to him.

The summonses must then be served upon defendants by a private process server and return of service must be filed with the Court. Attached to this order are the necessary forms for service of the complaint by summons. Option II: Plaintiff has the option of electing to serve defendants with the "Waiver of Service" form pursuant to Federal Rule of Civil Procedure 4(d).

If plaintiff uses this option, he and a self-addressed and stamped envelope, to defendants.¹ The Court will order the Clerk to forward these forms with the copy of this order. If defendants choose not to waive service, plaintiff will then need to use a private process server as described above in Option I. Option III: Under Federal Rule of Civil Procedure 4(c)(3), plaintiff may request the Court to "order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." Fed.

R. Civ. P. 4(c)(3). The Court has "discretion" to grant or deny this motion. Yates v. Baldwin, 633 F.3d 669, 672 (8th Cir. 2011). Plaintiff must show good cause for the Court to grant the motion. The Court advises plaintiff that several courts have denied motions for service by a U.S. marshal when the plaintiff has not attempted already either Option I or Option II for service.

Christians v. Hanvey, 4:23-CV-04137-LLP, 2024 WL 5293192, at *2 (D. S.D. Dec. 11, 2024) (collecting cases). The Court also advises plaintiff that the U.S. marshals "shall routinely collect,

and a court may tax as costs,” fees for the service of summons and complaints. 28 U.S.C. § 1921(a)(1). If requesting service by a U.S. marshal, plaintiff must submit to the Court a properly completed U.S. Marshals Service Form (Form USM-285).

Accordingly, IT IS HEREBY ORDERED that plaintiff shall cause service to be effected upon defendants no later than ninety (90) days from the date the complaint was filed, or 30 days after this order, whichever is later.

In the absence of good cause shown, failure to timely serve said defendants shall result in the dismissal of plaintiff’s claims as to said defendants without prejudice. 1If plaintiff chooses to serve defendants by waiver, he should file a notice with the Court informing the Court of his intention. Additionally, after defendant signs one copy of the waiver and returns it to plaintiff, plaintiff should file his copy of the signed waiver with the Court.

2 IT IS FURTHER ORDERED that the Clerk of Court shall forward to plaintiff with a copy of this order: 1) a file-stamped copy of the complaint; i1) two (2) summons forms; 111) a “Notice of Intent to Use Private Process Server” form; and iv) two (2) “Waiver of Service” forms. Dated this 2nd day of March, 2026. bow LAA \ tae tte AOSHUA M. DIVINE _ UNITED STATES DISTRICT JUDGE