

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
in the Middle District of
North Carolina
October 6, 2021
1:27 pm
Clerk, US District Court
By: JSB

IN RE:)
PROCEDURES FOR SERVICE OF)
PROCESS IN STATE PRISONER) STANDING ORDER 19
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) vests the responsibility for service with the court and its officers. In this district, the court provides summonses and the complaint to the United States Marshal Service (“USMS”) to send to defendants by certified mail.

In recent years, the court has observed an increase in USMS service attempts that initially fail. A significant percentage of all summonses and complaint 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 often 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 preference that defaults be avoided and that claims and defenses be disposed of on their merits.

In an effort to promote judicial efficiency and conserve state and federal resources, the court reached out to DPS officials and representatives of the North Carolina Attorney General's Office, and those officials and representatives requested that the Court adopt a plan similar to the processes in place in the Eastern District of North Carolina and the Western District of North Carolina for these types of cases. This order memorializes that plan, which is agreed to by DPS and the North Carolina Attorney's General's Office, and which the Court now adopts. 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 screening, 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 allowing the case to proceed 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 (60) days from the filing of the request for waiver of service to accept or refuse service of process upon the DPS employee and make the appropriate filing as set out below. DPS must undertake a good-faith effort to further identify the named or intended defendants where needed 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

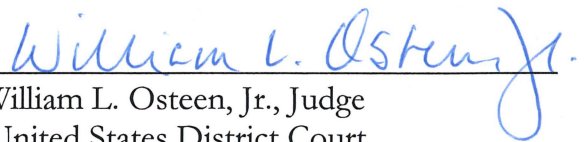
whether to undertake representation of any of the defendants pursuant to the Defense of State Employees Act.

- a. 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.
- b. 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.

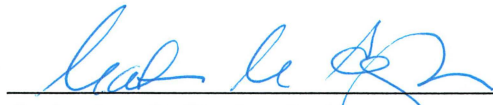
SO ORDERED. This the 6th day of October, 2021.



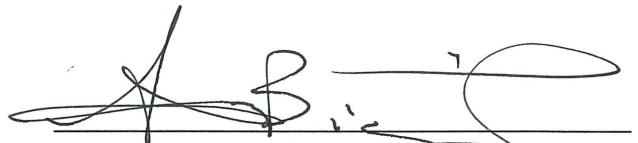
Thomas D. Schroeder, Chief Judge
United States District Court



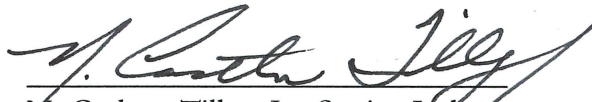
William L. Osteen, Jr., Judge
United States District Court



Catherine C. Eagles, Judge
United States District Court



Loretta C. Biggs, Judge
United States District Court



N. Carlton Tilley, Jr., Senior Judge
United States District Court