

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 14–cv–03447–KMT

BERNARD KENNETH MYERS,

Plaintiff,

v.

ELDON LOWELL MYERS, JR., executor and personal representative of Eldon Lowell Myers, Sr.,

DORWIN DWAYNE HUMMEL, executor and personal representative of Sally A. Myers,

ALICE JANE GARLAND, in her individual and official capacities,

ELIZABETH MARKHAM, in her individual and official capacities,

DEE ANN BEAMAN, in her individual and official capacities,

DANA D. WOODHAMS, in her individual and official capacities,

STEVEN FRANCIS, attorney at law,

RYAN CLEMENT, attorney at law,

PAUL GORDON, attorney at law, and

STEVEN MCWHIRTER, attorney at law,

Defendants.

ORDER

This matter is before the court on Plaintiff’s “Motion to Request Marshalls [sic] Service” (Doc. No. 5, filed December 22, 2014).

Plaintiff requests an order requiring the United States Marshal’s Service to serve the defendants in this matter. Plaintiff states he does not have the resources to serve the defendants, and he was in an automobile accident and has been unable to work.

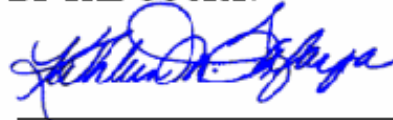
As Plaintiff is neither proceeding *in forma pauperis* nor a seaman, the decision whether to order the U.S. Marshal to serve the Summons and Complaint is left to the sound discretion of the court. Fed. R. Civ. P. 4(c)(3); *see Brewer v. Ray*, 181 F. App'x 563, 566 (7th Cir. 2006) (noting that prisoner not entitled to Marshal service where he was not proceeding *in forma pauperis*). The court finds that Plaintiff has failed to justify entry of an order requiring the Marshal's Service to serve the defendants. Plaintiff has an obligation to first "seek service by private means whenever feasible rather than impose the burden on the Marshal's Service." Advisory Committee Notes for Fed. R. Civ. P. 4, 93 F.R.D. 255, 262 (1981). Moreover, according to the Advisory Committee Notes for the rule authorizing service by U.S. Marshal, "court orders directing service by marshal should not be issued unless they are really necessary." *Id.* Plaintiff has failed to show such necessity.

Therefore it is

ORDERED that Plaintiff's "Motion to Request Marshalls [sic] Service" (Doc. No. 5) is **DENIED**.

Dated this 5th day of January, 2015.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge