

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

DONALD McCISKILL,
Plaintiff,

vs.

Case No. 3:09cv298/MCR/EMT

ROCKY SMITH,
Defendant.

ORDER

This matter is before the court on Plaintiff's filing a completed Notice of a Lawsuit and Request to Waive Service of a Summons (For Use by Prisoners Proceeding In Forma Pauperis) ("Notice") (Doc. 25-1). Previously the Department of Corrections ("DOC") provided an address in confidence for Defendant Rocky Smith to the United States Marshals Service ("USMS") in order to effect service of process (Doc. 22).

Accordingly, it is hereby **ORDERED**:

1. The clerk of court is directed to send to the USMS a copy of this order for Defendant Smith. The clerk shall also send the completed Notice and two (2) AO-399 forms (Waiver of the Service of Summons) (prepared by the clerk)¹ to the USMS, pursuant to Fed. R. Civ. P. 4(d). Pursuant to Fed. R. Civ. P. 4(c)(2), all costs of service shall be advanced by the United States.
2. The USMS shall complete a USM 285 form for Plaintiff, addressed to Defendant Smith.
3. Pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, the USMS shall send a copy of the complaint (Doc. 1),² a copy of this order, the Notice of Lawsuit form, two (2) copies of the AO-399 form, and a prepaid means of compliance to Defendant Smith through first class mail

¹ The clerk shall fill in the caption, case number, and name of Plaintiff, as applicable.

² The DOC was previously ordered to forward to the USMS the summons and service copy of the complaint that was provided by the court (*see* Doc. 15). If the DOC did not comply with this directive, the USMS shall contact Assistant General Counsel Alexandria E. Walters and request the documents.

at the address provided by the DOC. The USMS shall mail the forms to Defendant as soon as possible so that service or waiver of service can be completed within 120 days from the date of entry of this order on the docket.

4. If after thirty (30) days from the mailing of the waiver of service forms and the complaint Defendant has not returned the waiver of service form (AO-399 form), the USMS shall personally serve Defendant, pursuant to Rule 4(e) of the Federal Rules of Civil Procedure, with the summons provided by the DOC. Upon completion of service, the USMS shall file with the clerk the return and a written statement of all costs incurred of making such personal service.

5. The clerk shall refer this file to the undersigned if the waiver form is returned for insufficient address or for similar reason, if service on Defendant is returned unexecuted, or if the USMS has filed a statement of costs incurred for making personal service.

6. Defendant shall have **SIXTY (60) DAYS** in which to file a response to the complaint, if Defendant returns the waiver of service. Fed. R. Civ. P. 4(d)(3). Otherwise, if personal service is required, Defendant shall have **TWENTY-ONE (21) DAYS** in which to file a response to the complaint.

7. No motion for summary judgment shall be filed by any party prior to entry of an Initial Scheduling Order without permission of the court.

8. Counsel for Defendant shall file a notice of appearance within **THIRTY (30) DAYS** of the date of service.

9. **In any event, the clerk shall refer this file to the undersigned forty-five (45) days from the date of this order.**

DONE AND ORDERED this 25th day of October 2010.

/s/ Elizabeth M. Timothy _____
ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE