

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**DERRICK ALLEN,**

**Plaintiff,**

**vs.**

**CASE NO. 4:07CV469-RH/AK**

**JAMES MCDONOUGH, et al,**

**Defendants.**

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**SECOND SERVICE ORDER**

Summons has been returned un-executed on eight of the twelve Defendants named in the complaint. (Docs. 50 through 57). Plaintiff is herein advised that the Court has been notified that the following persons are not and have never been employed at Franklin CI: **Sgt. Hires, Captain Murray, and M.B. Stratton**. Plaintiff must provide the Court with the correct names of these persons or wait to learn their identities after discovery has commenced. Nonetheless, Plaintiff is responsible for providing sufficient information to serve these persons and if no efforts are made to have them served it will be recommended that they be dismissed later in these proceedings.

With regard to **Sergeant Austin** and **Rick Schlaf**, the process server at Franklin CI has provided their new work locations and service will be attempted upon them as follows:

1. The Clerk shall issue summonses for these two Defendants, indicating that Defendants have sixty (60) days in which to file a response to the complaint, and refer

the summonses to the United States Marshals, along with the service copies of Plaintiff's complaint. **Defendant Austin may be served at Glades Correctional Institution, 500 Orange Avenue Circle, Belle Glade, Florida 33430. Rick Schlaf may be served at Walton Correctional Institution, 691 Institution Road, DeFuniak Springs, Florida 32433.**

3. The Clerk shall also prepare and send the Marshal a copy of this order for each of the named Defendants.

4. Pursuant to Rule 4(c), Federal Rules of Civil Procedure, **Dorothy Church** is specially appointed to serve process at Glades CI and **Darren Russell** is specially appointed to serve process at Walton CI.

5. Within 30 days from the date of entry of this order on the docket, the United States Marshal or a Deputy United States Marshal shall serve a copy of the civil rights complaint, a summons, and this order upon each Defendant. Service shall be accomplished **by mailing these documents by regular mail to the above named special process servers who shall serve the complaint.** All costs of service shall be advanced by the United States.

6. Within 10 days after receipt of the complaint and this order, **Dorothy Church and Darren Russell** shall **serve the complaint upon the individuals named above, complete and sign** the return of service, and **return** it to the Clerk of Court as proof of service. *Defendants shall also sign the return of service as an acknowledgment of receipt of service.*

7. *If service is returned unexecuted, or if a return is not filed within forty-five (45) days from the date of this order, the Clerk of Court shall immediately notify Chambers.*

8. Defendants shall have 60 days in which to file a response to the complaint.

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

10. Counsel for Defendants shall file a notice of appearance within thirty (30) days of the date of service.

11. Plaintiff is advised that after a response to the complaint has been filed, no further amendments to the complaint shall be permitted by the Court unless, as required by Rule 15 of the Federal Rules of Civil Procedure, Plaintiff files a separate motion for leave to so amend and provides a copy of the proposed amended complaint. N.D. Fla. Loc. R. 15.1.

12. In accordance with 28 U.S.C. § 636(c)(2), the Clerk shall forward to Plaintiff a form for consenting to trial by the magistrate judge, with the case number written on it. If Plaintiff wishes to consent, the form should be signed and forwarded to counsel for Defendants. If Defendants wish to consent, the form should be signed and returned to the Clerk.

13. After a notice of appearance has been filed, Plaintiff shall be required to mail to the attorney for each Defendant a copy of every pleading or other paper, including letters, submitted for consideration by the Court. Plaintiff shall include with each pleading, motion, or other paper to be filed with the Clerk of the Court a certificate stating the date an identical copy of the paper was mailed to each Defendant or to the

attorney representing each Defendant. Any paper so submitted for filing that does not contain a "certificate of service" shall be returned by the Clerk and disregarded by the Court.

14. Plaintiff is reminded to keep the Clerk of Court advised of any change in his mailing address should he be transferred, released from prison, or otherwise be relocated. Failure to do so may result in the dismissal of Plaintiff's action for failure to prosecute should court orders not be able to reach Plaintiff.

With regard to Defendants **Michael Fordham, K. Hollenbeck, and R. Millender**, a request will be made upon the FDOC to provide their last known addresses in confidence to the United States Marshals Service as follows:

15. The clerk shall re-issue summons for Defendant Fordham, Hollenbeck and Millender, indicating that they have sixty (60) days in which to file a response to the complaint.

16. The clerk shall send the summons, a copy of this order, and a copy of the amended complaint (Doc. 33) to Anthony Miller, Assistant General Counsel for the Department of Corrections, 2601 Blairstone Road, Tallahassee, FL 32399-2500.

17. The Office of the General Counsel for the Department of Corrections shall have **thirty (30) days** from the date this order is entered on the docket in which to either: (1) inform the USMS (specifically, Jennifer Tallarico of the USMS office in Tallahassee) in confidence of Defendants last known addresses, (2) enter an appearance on their behalf, or (3) advise the court that neither alternative is possible. If

Defendant addresses are provided to the USMS, the Assistant General Counsel shall file a notice with the court that this has been done. In such event, the Assistant General Counsel shall also forward to the USMS the copy of this order, the summons, and the service copy of the amended complaint. **The USMS shall protect the confidentiality of any address provided by the Department of Corrections as required by Florida law, and shall not disclose any such information on any document filed with the court.**

18. Upon receipt of an address for any of the Defendants, the USMS shall send a copy of the complaint, a copy of this order, the completed AO-389 form and a copy thereof, a AO-390 form, and a prepaid means of compliance to the Defendants through first class mail. The USMS shall mail the documents to the Defendants 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.

19. If after thirty (30) days from the mailing of the waiver of service forms and the complaint any of the Defendants have not returned the waiver of service form (AO-390 form), the USMS shall personally serve that Defendant pursuant to Rule 4(e) of the Federal Rules of Civil Procedure. 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.

20. 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 any of the

Defendants is returned unexecuted, or if the USMS has filed a statement of costs incurred for making personal service.

21. Defendant shall have sixty (60) days in which to file a response to the complaint.

22. No motion for summary judgment shall be filed by any party prior to entry of an initial scheduling order without permission of the court.

23. Counsel for Defendant shall file a notice of appearance within twenty (20) days of the date of service of the complaint.

Accordingly, it is

**DONE AND ORDERED** on this the 25<sup>th</sup> day of February, 2009.

***s/ A. KORNBLUM***  
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**ALLAN KORNBLUM**  
**UNITED STATES MAGISTRATE JUDGE**