

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

WILLIE KIMBROUGH,

Plaintiff,

vs.

WOODBURY COUNTY JAIL,

Defendant.

No. C13-3002-MWB

ORDER

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This matter is before the court on the plaintiff's motion to waive filing fee and to proceed (docket no. 5). The plaintiff filed such motion on September 25, 2013. As the court previously indicated in its September 9, 2013 order, the plaintiff is required to pay the full \$350.00 filing fee by making payments on an installment basis. *See* 28 U.S.C. § 1915(b)(1); *see also In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997) (“[T]he [Prisoner Litigation Reform Act] makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.”). This is so regardless of how the court addresses the plaintiff's complaint; it makes no difference whether the court allows him to proceed further or dismisses the action on initial review. Nevertheless, in light of the fact that the plaintiff is unable to submit the initial partial filing fee because he is in protective custody, the court deems it appropriate to forgo collecting the initial partial filing fee and to require the plaintiff to just make monthly payments of 20 percent of the preceding month's income credited to his account. *See* 28 U.S.C. § 1915(b)(2).

The institution having custody of the plaintiff is directed to collect and remit monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2). Until the \$350.00 filing fee is paid in full, the plaintiff is obligated to pay and the institution having custody of him is obligated to forward 20 percent of the preceding month's income credited to his

account each time the amount in the account exceeds \$10.00. The clerk's office is directed to send a copy of this order to the appropriate official at the place where the plaintiff is an inmate.

As to the course that should be taken in light of the plaintiff's financial situation, the court finds that it is appropriate to allow the plaintiff to proceed with his cause of action. Having conducted the required initial review under 28 U.S.C. § 1915, the court is unable to determine as a matter of law whether the plaintiff's complaint is frivolous or fails to state a claim. Consequently, the court is of the opinion that the matter is best addressed after receipt of an answer and/or any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The clerk's office is directed to serve the complaint on the defendant and mail a copy of the complaint to the Woodbury County Attorney without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Woodbury County Attorney shall notify the court immediately if he lacks the consent of the defendant to appear generally on its behalf and submit to the jurisdiction of the court. The defendant shall file an answer or other dispositive motion by no later than December 20, 2013.

Based on the foregoing, the plaintiffs motion to waive the filing fee is **denied in part** and **granted in part**.

**IT IS SO ORDERED.**

**DATED** this 21<sup>st</sup> day of November, 2013.



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LEONARD T. STRAND  
UNITED STATES MAGISTRATE JUDGE

**NOTICE OF LAWSUIT  
and REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS**

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

WILLIE KIMBROUGH,  
Plaintiff,

vs.

WOODBURY COUNTY JAIL,  
Defendant.

No. C13-3002-MWB

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A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint and a copy of the corresponding order from this court are attached. This complaint has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and complaint. Please sign the enclosed document where appropriate acknowledging receipt of the complaint and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: 11/21/13.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this 11/21/13, 2013.

/s/ djs, Deputy Clerk  
Signature (Clerk's Office Official)  
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF  
NOTICE OF LAWSUIT,  
and WAIVER OF SERVICE OF SUMMONS**

(\*\*Return **this** document within thirty days after 11/21/13, to the United States Clerk's Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT  
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WILLIE KIMBROUGH,  
Plaintiff,

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WOODBURY COUNTY JAIL,  
Defendant.

No. C13-3002-MWB

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I acknowledge receipt of the complaint and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a defendant. I have received and/or read the complaint accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the complaint by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served within 60 days after 11/21/13, (the date Notice, Waiver and corresponding documents were sent).

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

As \_\_\_\_\_ of \_\_\_\_\_

(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

As \_\_\_\_\_ of \_\_\_\_\_

(Title) (Entity)

**Address Form**

Case Number: C13-3002-MWB

Date: November 20, 2013

To: Clerk of Court

RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: All Defendants

Woodbury County Jail