

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

JAYME RYAN POWELL,
Plaintiff,

vs.

JIM MCKINNEY
Defendants.

No. 13-CV-4020-DEO

ORDER

Mr. Powell is currently incarcerated at the Fort Dodge Correctional Facility pursuant to a conviction for first and second degree robbery. Docket #1, Powell v. State, 820 N.W.2d 159 (Iowa Ct. App. 2012).

I. IN FORMA PAUPERIS

On February 13, 2013, Mr. Powell filed a pro se petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Docket # 1. On February 14, 2013, this Court entered an order stating that Mr. Powell needed to pay a five dollar filing fee or apply to proceed in forma pauperis before his case could proceed.¹ On February 21, 2013, this Court was informed by the Clerk of Court that Mr. Powell had previously paid the five dollar filing fee, although it had not been noted in the Court file. On March 4, 2013, Mr. Powell filed an application to proceed

¹In the February 14, 2013 Order, the Court also dismissed the State of Iowa as party.

in forma pauperis. Docket #4. Accordingly, the Court amends its previous order in the following manner:

1. Mr. Powell has paid the appropriate fee. No further fee is required.

2. Mr. Powell's application to proceed in forma pauperis is denied as moot.

3. The Clerk of Court is ordered to send a copy of the Petitioner's 28 U.S.C. § 2254 petition by certified mail to the respondent and the Iowa Attorney General in accordance with Rule 4, Rules Governing Section 2254 Cases.

II. COURT APPOINTED COUNSEL

On March 4, 2013, Mr. Powell filed an application for court appointed counsel. Docket #3. 28 U.S.C.A. § 2254(h) states:

Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.²

²18 U.S.C.A. § 3006A(a)(2) states "[w]henver the United States magistrate judge or the court determines that the

The Court has considered the record in this case and determined that the appointment of counsel is appropriate. Appointed counsel shall file an amended petition in twenty (20) days from the date of this Order, or file an application for additional time to file amended complaint prior to the expiration of the filing deadline.

III. CONCLUSION

For the reasons set out above, the Clerk shall file Mr. Powell's Petition and send a copy to the Iowa Attorney General. Mr. Powell's Motion to proceed in forma pauperis is denied as moot.³ Mr. Powell's Motion to Appoint Counsel is granted, and appointed counsel shall file an amended complaint as directed in this Order.

IT IS SO ORDERED this 18th day of March, 2013.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa

interests of justice so require, representation may be provided for any financially eligible person who...is seeking relief under section 2241, 2254, or 2255 of title 28."

³Mr. Powell's application to proceed in forma pauperis denied without prejudice and may be re-filed by Mr. Powell's appointed counsel.

**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
WESTERN DIVISION**

JAYME RYAN POWELL,

Petitioner,

v.

JIM MCKINNEY, Warden,

Respondent.

No. 13-CV-4020-DEO

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: March 18, 2013.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this March 18, 2013, 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 March 18, 2013, to the United States Clerk's Office in the envelope provided.)

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

JAYME RYAN POWELL,

Petitioner,

v.

JIM MCKINNEY,

Respondents.

No. 13-CV-4020-DEO

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 March 18, 2013, (the date Notice, Waiver and corresponding documents were sent or from the date of the filing of the Amended Complaint, whichever is later) .

Date _____

Signature _____

Printed name _____

As _____ of _____

(Title)

(Entity)

Address Form

Case Number: 13-CV-4020-DEO

Date: March 18, 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 Respondents**
Attorney General
Hoover State Office Building
1305 E. Walnut Street-2nd Floor
Des Moines, Iowa 50319

Fort Dodge Correctional Facility
Jim McKinney, Warden
1550 L Street
Fort Dodge, Iowa 50501