

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ELEAZAR GARCIA,

Plaintiff,

vs.

U.S. MARSHALS and SARPY COUNTY
JAIL,

Defendants.

4:20CV3049

**MEMORANDUM
AND ORDER**

In prior Memoranda and Orders, the court concluded that Plaintiff failed to state a claim upon which relief can be granted against the Sarpy County Jail and the U.S. Marshals (Filing 7), but Plaintiff was granted leave to file an amended complaint to allege facts relevant to the following claims: (a) deliberate indifference to a serious medical need against specifically identified¹ U.S. Marshals or Sarpy County Jail personnel in their individual capacities who were personally involved with the decisions affecting Plaintiff's medical care or the lack thereof; and (b) excessive force against specifically identified U.S. Marshals in their individual capacities who allegedly broke Plaintiff's arm. (Filings 9, 16.)

Plaintiff has filed an Amended Complaint (Filing 22) naming the following Defendants: Deputy U.S. Marshal David W. Coombs, Jr., in his individual capacity; Deputy U.S. Marshal Jacob P. Betsworth, in his individual capacity; and Sarpy County Sheriff Jeff Davis, in his individual capacity. Because Plaintiff's Amended Complaint plausibly states deliberate-indifference and/or excessive-force claims

¹ The U.S. Marshals and Sarpy County were served with process for the sole purpose of permitting Plaintiff to serve discovery documents on such Defendants in order to determine the identity of the individuals who are alleged to have violated Plaintiff's constitutional rights. (Filing 9.)

against these Defendants, such claims will proceed to service of process. Accordingly,

IT IS ORDERED:

1. Defendants U.S. Marshals and Sarpy County Jail are dismissed from this action for failure to state a claim upon which relief can be granted;

2. The Clerk of Court shall add the following Defendants to the docket sheet for this case: Deputy U.S. Marshal David W. Coombs, Jr., in his individual capacity; Deputy U.S. Marshal Jacob P. Betsworth, in his individual capacity; and Sarpy County Sheriff Jeff Davis, in his individual capacity.

3. For service of process on Defendant Sarpy County Sheriff Jeff Davis in his individual capacity, the Clerk of Court is directed to complete a summons form and a USM-285 form for such Defendant using the address “Sarpy County Sheriff’s Office, 8335 Platteview Rd., Papillion, NE 68046” and forward them together with a copy of the Complaint (Filing 1), Amended Complaint (Filing 22), and a copy of this Memorandum and Order to the Marshals Service.² **The Marshals Service shall**

² Pro se litigants proceeding in forma pauperis are entitled to rely on service by the United States Marshals Service. *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir. 2013). Pursuant to 28 U.S.C. § 1915(d), in an in forma pauperis case, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases.” *See Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997) (language in § 1915(d) is compulsory); Fed. R. Civ. P. 4(c)(3) (court must order that service be made by United States Marshal if plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915). *See, e.g., Beyer v. Pulaski County Jail*, 589 Fed. App’x 798 (8th Cir. 2014) (unpublished) (vacating district court order of dismissal for failure to prosecute and directing district court to order the Marshal to seek defendant’s last-known contact information where plaintiff contended that the jail would have information for defendant’s whereabouts); *Graham v. Satkoski*, 51 F.3d 710, 713 (7th Cir. 1995) (when court instructs Marshal to serve papers for

serve Defendant Sarpy County Sheriff Jeff Davis personally in his individual capacity at the Sarpy County Sheriff's Office, 8335 Platteview Rd., Papillion, NE 68046. Service may also be accomplished by using any of the following methods: residence, certified mail, or designated delivery service. *See* Federal Rule of Civil Procedure 4(e); Neb. Rev. Stat. § 25-508.01.

4. For service of process on Defendants Deputy U.S. Marshal David W. Coombs, Jr., in his individual capacity, and Deputy U.S. Marshal Jacob P. Betsworth, in his individual capacity, the Clerk of Court is directed to complete a summons form and a USM-285 form for such Defendants using an address obtained by the U.S. Marshal Service for such deputies. The Clerk of Court shall then forward the summonses and USM-285 forms together with a copy of the Complaint (Filing 1), Amended Complaint (Filing 22), and a copy of this Memorandum and Order to the Marshals Service. **The Marshals Service shall serve Deputy U.S. Marshal David W. Coombs, Jr., and Deputy U.S. Marshal Jacob P. Betsworth personally in their individual capacities at the address identified by the U.S. Marshal.** Service may also be accomplished by using any of the following methods: residence, certified mail, or designated delivery service. *See* Federal Rule of Civil Procedure 4(e); Neb. Rev. Stat. § 25-508.01.

5. The United States Marshal shall serve all process in this case without prepayment of fees from Plaintiff.

6. Federal Rule of Civil Procedure 4(m) requires service of the complaint on a defendant within 90 days of filing the complaint. However, Plaintiff is granted, on the court's own motion, an extension of time until 90 days from the date of this order to complete service of process. The Clerk of Court shall set a case-management deadline accordingly.

prisoner, prisoner need furnish no more than information necessary to identify defendant; Marshal should be able to ascertain defendant's current address).

7. Plaintiff's Motion to Appoint Counsel (Filing 20) is denied without prejudice for the reasons stated in Filing 9.

8. Plaintiff's Motion for Update (Filing 23) is denied as moot.

9. The Clerk of the Court is directed to set the following pro se case management deadline: February 3, 2021—deadline for service of process.

DATED this 5th day of November, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge