

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>JAMES ELMER SHAW,  Plaintiff,  vs.  <b>TROY PONTO</b>, ASSOCIATE WARDEN, INDIVIDUAL AND OFFICIAL CAPACITY; <b>AL MADSON</b>, UNIT MANAGER, INDIVIDUAL AND OFFICIAL CAPACITY; <b>SAM BADURE</b>, UNIT MANAGER, INDIVIDUAL AND OFFICIAL CAPACITY; <b>DERICK BIEBER</b>, UNIT MANAGER, INDIVIDUAL AND OFFICIAL CAPACITY; <b>JACOB GLASIER</b>, UNIT COORDINATOR, INDIVIDUAL AND OFFICIAL CAPACITY; <b>DR. MARY CARPENTER</b>, M.D. (HEALTH SERVICES), INDIVIDUAL AND OFFICIAL CAPACITY; <b>DR. EUGENE REGIER</b>, MD, INDIVIDUAL AND OFFICIAL CAPACITY; <b>HEATHER BOWERS, RN</b> (HEATH SERVICES), INDIVIDUAL AND OFFICIAL CAPACITY; <b>AUDREY SHEDD</b>, HEAD REGISTERED NURSE, INDIVIDUAL AND OFFICIAL CAPACITY; Defendants.</p>	<p>4:15-CV-04121-KES  ORDER  MOTION FOR SERVICE [DOCKET 75]</p>
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**INTRODUCTION**

This matter is before the court on plaintiff James Elmer Shaw's *pro se* fourth amended complaint pursuant to 42 U.S.C. § 1983, filed September 12, 2016. See Docket No. 41. Mr. Shaw has been granted *in forma pauperis* status and has been allowed to proceed without payment of the partial filing fee. Docket 13.

The pending matter was referred to this magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and the March 31, 2017, order of the Honorable Karen E. Schreier, district judge.

### **INTRODUCTION**

Mr. Shaw requests permission to be allowed to “merely notice” the defendants of his filings, rather than be required to serve paper copies upon them through their attorney as required by the Federal Rules of Civil Procedure and Local Rule 5.1. Mr. Shaw explains in his motion that he “once before” moved the court to allow him to serve documents upon the defendants in this fashion, but the court denied his motion “without explanation.” See Docket 75, p. 1.

Mr. Shaw’s previous motion (Docket 21) was filed with the court before any version of his complaint had been served upon any of the defendants. See Docket sheet. When the district court previously denied Mr. Shaw’s motion regarding service (Docket 24) the court interpreted Mr. Shaw’s motion as requesting waiver of the requirement that physical copies of the *complaint* be served upon the individual defendants. See Docket 24, p. 30. According to Local Rule 5.1.A.2, service of the summons and complaint may not be made electronically, but must be made pursuant to Fed. R. Civ. P. 4.

Additionally, the district court explained to Mr. Shaw that that because he had been granted *in forma pauperis* status, he needed only to complete and return the summons forms, and officers of the court would serve copies of his second amended complaint for him—there was no need for Mr. Shaw to provide copies. Id.

## ANALYSIS

The defendants indicated to the court they do not resist Mr. Shaw's pending motion. Docket 82, p. 12. Nor could they. Local Rule 5.1.A.2 states:

**2. What constitutes service.**

Receipt of Notice of Electronic Filing (NEF) that is generated by the Case Management/Electronic Case filing (CM/ECF) system constitutes service of pleadings or other papers on any person who has consented to electronic service. Parties who have not consented to electronic service including exempt attorneys and *pro se* parties must be served in accordance with these rules and the Federal Rules of Civil Procedure.

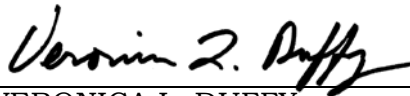
Service of the summons and complaint must not be made electronically, but should proceed according to FED. R. CIV. P. 4.

As noted by Mr. Shaw, counsel for the defendants are registered CM/ECF users. Pursuant to Local Rule 5.1.A.1, "[r]egistration constitutes written consent to electronic service of all documents filed in accordance with these rules and the Federal Rules of Civil Procedure." Counsel for the defendants, therefore, because they are registered CM/ECF users, have consented to electronic service.

THEREFORE, it is ORDERED that Mr. Shaw's motion for service [Docket 75] is GRANTED.

DATED this 16th day of June, 2017.

BY THE COURT:



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VERONICA L. DUFFY  
United States Magistrate Judge