

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH ADAIR DAVIS,

Plaintiff,

v.

WILLIAM HAYES, et al.,

Defendants.

CASE NO. C16-1709-RSM-BAT

**ORDER DIRECTING SERVICE OF
AMENDED COMPLAINT**

On April 14, 2017, the Court dismissed all of plaintiff's claims except his claim that Defendants Gorman, McKindry, Bliss, and Elerick used excessive force against him in August and September 2014 and August 2016. Dkt. 30. The Court's Order was sent to these defendants, but it is not clear whether they were properly served with the Amended Complaint.

Accordingly, it is **ORDERED** that the Amended Complaint (Dkt. 20) shall be served on defendants Gorman, McKindry, Bliss, and Elerick only and these defendants shall be required to file an answer **only as to the excessive force claims**:

(1) Service by Clerk

The Clerk is directed to send the following to defendants Gorman, McKindry, Bliss, and Elerick by first class mail: copies of plaintiff's amended complaint (Dkt. 20) and the Court's

1 Order (Dkt. 30), two copies of the Notice of Lawsuit and Request for Waiver of Service of
2 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed
3 to the Clerk's office. The Clerk shall also send a courtesy copy of the above-named documents
4 and of this Order to the King County Prosecutor's Office, by first-class mail.

5 (2) Response Required

6 Defendants shall have **30 days** within which to return the enclosed waiver of service of
7 summons. Any defendant who timely returns the signed waiver shall have **60 days** after the date
8 designated on the notice of lawsuit to file and serve an answer to the complaint or a motion
9 permitted under Rule 12 of the Federal Rules of Civil Procedure.

10 Any defendant who fails to timely return the signed waiver will be personally served with
11 a summons and complaint, and may be required to pay the full costs of such service, pursuant to
12 Rule 4(d)(2). A defendant who has been personally served shall file an answer or motion
13 permitted under Rule 12 within **30 days** after service.

14 **Defendants MUST serve a *Rand* notice concurrently with motions to dismiss based**
15 **on a failure to exhaust and motions for summary judgment so that *pro se* prisoner plaintiffs**
16 **will have fair, timely and adequate notice of what is required of them in order to oppose**
17 **those motions. *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012).** The Ninth Circuit set forth
18 model language for such notices:

19 A motion for summary judgment under Rule 56 of the Federal
20 Rules of Civil Procedure will, if granted, end your case.

21 Rule 56 tells you what you must do in order to oppose a motion for
22 summary judgment. Generally, summary judgment must be
23 granted when there is no genuine issue of material fact – that is, if
there is no real dispute about any fact that would affect the result
of your case, the party who asked for summary judgment is entitled
to judgment as a matter of law, which will end your case. When a
party you are suing makes a motion for summary judgment that is

1 properly supported by declarations (or other sworn testimony), you
2 cannot simply rely on what your complaint says. Instead, **you**
3 **must set out specific facts in declarations, depositions, answers**
4 **to interrogatories, or authenticated documents, as provided in**
5 **Rule 56(e), that contradict the facts shown in the defendant’s**
6 **declarations and documents and show that there is a genuine**
7 **issue of material fact for trial. If you do not submit your own**
8 **evidence in opposition, summary judgment, if appropriate,**
9 **may be entered against you. If summary judgment is granted,**
10 **your case will be dismissed and there will be no trial.**

11 *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (emphasis added).

12 **Defendants who do not file and serve, in a separate document, the required *Rand***
13 **notice will face (a) immediate denial of their motions with leave to refile and (b) possible**
14 **monetary sanctions.**

15 (3) Filing and Service by Parties Generally

16 All attorneys admitted to practice before this Court are required to file documents
17 electronically via the Court’s CM/ECF system. All non-attorneys, such as *pro se* parties and/or
18 prisoners, may continue to file a paper original with the Clerk. All filings, whether filed
19 electronically or in traditional paper format, must indicate in the upper right hand corner the
20 name of the Magistrate Judge to whom the document is directed.

21 When an electronic filing exceeds 50 pages in length, a paper copy of the document (with
22 tabs or other organizing aids as necessary) shall be delivered to the Clerk’s Office for chambers.
23 The chambers copy must be clearly marked with the words “Courtesy Copy of Electronic Filing
for Chambers.” A party filing a paper original does not need to file a chambers copy.

Additionally, any document filed with the Court must be accompanied by proof that it
has been served upon all parties that have entered a notice of appearance in this case.

//

//

1 (4) Non-State Defendants

2 As a registered user of the Court's electronic filing system, you must accept electronic
3 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at
4 the Washington Corrections Center (WCC) who are subject to Mandatory Electronic E-Filing.
5 WCC prisoner litigants are no longer required to serve their court filings on the Court or
6 defendants by mail. Service by mail of your court filings to WCC prisoner litigants is also no
7 longer required.

8 (5) Motions

9 Regarding the filing of motions before the Court, the parties are directed to review Local
10 Rule CR 7 in its entirety. A few important points are highlighted below:

11 Any request for court action shall be set forth in a motion, properly filed and served.
12 Pursuant to Local Rule CR 7(b), any argument being offered in support of a motion shall be
13 submitted as a part of the motion itself and not in a separate document. **The motion shall**
14 **include in its caption (immediately below the title of the motion) a designation of the date**
15 **the motion is to be noted for consideration upon the court's motion calendar.**

16 **In all instances where one of the parties to a lawsuit is incarcerated, all categories of**
17 **non-dispositive motions not listed in Local Rule CR 7(d)(1) must be noted for the third**
18 **Friday after the date of filing and service.** See Local Rule CR 7(d)(2).

19 All dispositive motions shall be noted for consideration no earlier than the fourth Friday
20 following filing and service of the motion.

21 (6) Direct Communications with District Judge or Magistrate Judge

22 No direct communication is to take place with the District Judge or Magistrate Judge with
23 regard to this case. **All relevant information and papers are to be directed to the Clerk.**

1 (7) The Clerk is directed to send a copy of this Order to plaintiff and a copy of this
2 Order to the Hon. Ricardo S. Martinez.

3 DATED this 13th day of June, 2017.

4
5 

6 _____
7 BRIAN A. TSUCHIDA
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23