

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DYLAN JAMES DOWNEY,

Plaintiff,

Case No. C17-1024-JCC-MAT

V.

TY TRENARY, *et al.*,

Defendants.

ORDER DIRECTING SERVICE OF
FIRST AMENDED CIVIL RIGHTS
COMPLAINT

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding with this action *pro se* and *in forma pauperis*. The Court, having reviewed plaintiff's first amended complaint, hereby ORDERS as follows:

(1) Service by Clerk

The Clerk is directed to send to defendants Hatchell, Huntsinger, Moody, Marler, Hall, Roy, Lilly, Dilley, and Dizon, a copy of plaintiff's first amended complaint (Dkt. 19), a copy of this Order, two copies of the notice of lawsuit and request for waiver of service of summons, a waiver of service of summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.

(2) Response Required

Defendants shall have **thirty (30) days** within which to return the enclosed waivers of

ORDER DIRECTING SERVICE OF FIRST
AMENDED CIVIL RIGHTS COMPLAINT
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1 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60) days**
2 after the date designated on the notice of lawsuit to file and serve an answer to the amended
3 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

4 A defendant who fails to timely return the signed waiver will be personally served with a
5 summons and amended complaint, and may be required to pay the full costs of such service,
6 pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been
7 personally served shall file an answer or motion permitted under Rule 12 within **thirty (30) days**
8 after service.

9 (3) Filing and Service by Parties, Generally

10 All attorneys admitted to practice before this Court are required to file documents
11 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
12 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
13 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original
14 with the Clerk. All filings, whether filed electronically or in traditional paper format, must indicate
15 in the upper right hand corner the name of the magistrate judge to whom the document is directed.

16 For any party filing electronically, when the total of all pages of a filing exceeds fifty (50)
17 pages in length, a paper copy of the document (with tabs or other organizing aids as necessary)
18 shall be delivered to the Clerk's Office for chambers. The chambers copy must be clearly marked
19 with the words "Courtesy Copy of Electronic Filing for Chambers."

20 Any document filed with the Court must be accompanied by proof that it has been served
21 upon all parties that have entered a notice of appearance in the underlying matter.

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23 (4) Motions, Generally

1 Any request for court action shall be set forth in a motion, properly filed and served.
2 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
3 part of the motion itself and not in a separate document. The motion shall include in its caption
4 (immediately below the title of the motion) a designation of the date the motion is to be noted for
5 consideration upon the Court's motion calendar.

6 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
7 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
8 motions for default, requests for the clerk to enter default judgment, and motions for the court to
9 enter default judgment where the opposing party has not appeared shall be noted for consideration
10 on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall be noted for
11 consideration no earlier than the third Friday following filing and service of the motion. *See* LCR
12 7(d)(3). All dispositive motions shall be noted for consideration no earlier than the fourth Friday
13 following filing and service of the motion. *Id.*

14 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
15 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday immediately
16 preceding the date designated for consideration of the motion. If a party (i.e. a *pro se* litigant
17 and/or prisoner) files a paper original, that opposition must be received in the Clerk's office by
18 4:30 p.m. on the Monday preceding the date of consideration.

19 The party making the motion may file and serve, not later than 11:59 p.m. (if filing
20 electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office) on the date designated
21 for consideration of the motion, a reply to the opposing party's briefs and affidavits.

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23 (5) Motions to Dismiss and Motions for Summary Judgment

1 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
2 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
3 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
4 noted for consideration no earlier than the fourth Friday following filing and service of the motion.

5 Defendants filing motions to dismiss or motions for summary judge are advised that they
6 MUST serve *Rand* notices concurrently with motions to dismiss based on failure to exhaust
7 administrative remedies and motions for summary judgment so that *pro se* prisoner plaintiffs will
8 have fair, timely and adequate notice of what is required of them in order to oppose those motions.

9 *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit has set forth model language
10 for such notices:

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

13 Rule 56 tells you what you must do in order to oppose a motion for summary
14 judgment. Generally, summary judgment must be granted when there is no
15 genuine issue of material fact – that is, if there is no real dispute about any
16 fact that would affect the result of your case, the party who asked for
17 summary judgment is entitled to judgment as a matter of law, which will
18 end your case. When a party you are suing makes a motion for summary
19 judgment that is properly supported by declarations (or other sworn
20 testimony), you cannot simply rely on what your complaint says. Instead,
21 **you must set out specific facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided in Rule 56(e),
that contradict the facts shown in the defendant's declarations and
documents and show that there is a genuine issue of material fact for
trial. If you do not submit your own evidence in opposition, summary
judgment, if appropriate, may be entered against you. If summary
judgment is granted, your case will be dismissed and there will be no
trial.**

22 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

23 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their

1 motion stricken from the Court's calendar with leave to re-file.

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

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

5 (7) The Clerk is directed to send a copy of this Order to plaintiff. The Clerk is further
6 directed send a copy of this Order and a courtesy copy of plaintiff's first amended complaint to
7 the Snohomish County Prosecutor's Office by first-class mail.

8 Dated this 20th day of September, 2017.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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