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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH M. ALLEN,

Plaintiff,

v.

MARK MILLER,

Defendant.

Case No. C17-1625-JCC-MAT

ORDER DIRECTING SERVICE OF
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 amended complaint, and the balance of the record, hereby ORDERS as follows:

(1) Service by Clerk

The Clerk is directed to send to Mark Miller, Correctional Program Manager at the Washington State Reformatory, by e-mail: a copy of plaintiff's amended complaint (Dkt. 7), a copy of plaintiff's application for court-appointed counsel (Dkt. 9), and a copy of this Order, a copy of the notice of lawsuit and request for waiver of service of summons, and a waiver of service of summons.

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ORDER DIRECTING SERVICE OF
CIVIL RIGHTS COMPLAINT - 1

1 (2) Response Required

2 Defendant shall have **thirty (30) days** within which to return the waiver of service of
3 summons. If defendant timely returns the signed waiver, he shall have **sixty (60) days** after the
4 date designated on the notice of lawsuit to file and serve an answer to the amended complaint or a
5 motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

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

10 (3) Filing and Service by Parties, Generally

11 All attorneys admitted to practice before this Court are required to file documents
12 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
13 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
14 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand
15 corner the name of the magistrate judge to whom the document is directed.

16 Any document filed with the Court must be accompanied by proof that it has been served
17 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiff shall
18 indicate the date the document is submitted for e-filing as the date of service.

19 (4) Motions, Generally

20 Any request for court action shall be set forth in a motion, properly filed and served.
21 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
22 part of the motion itself and not in a separate document. The motion shall include in its caption
23 (immediately below the title of the motion) a designation of the date the motion is to be noted for

1 consideration upon the Court's motion calendar.

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

10 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
11 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday immediately
12 preceding the date designated for consideration of the motion. The party making the motion may
13 electronically file and serve, not later than 11:59 p.m. on the date designated for consideration of
14 the motion, a reply to the opposing party's briefs and affidavits.

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

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

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

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

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

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

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

22 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their
23 motion stricken from the Court’s calendar with leave to re-file.

24 (6) Plaintiff’s Application for Court-Appointed Counsel

25 Plaintiff has submitted to the Court for consideration an application for court-appointed
26 counsel. (Dkt. 9) He asserts therein that he is in maximum custody and has no access to legal
27 materials, including the Westlaw computers. Before ruling on this application, the Court deems it
28 appropriate to give defendant an opportunity to respond to plaintiff’s request for counsel.
29 Accordingly, defendant is directed to file a response to plaintiff’s application for court-appointed
30 counsel not later than **April 3, 2018**. Plaintiff’s application for court-appointed counsel is noted
31 on the Court’s calendar for consideration on **April 6, 2018**.

1 (7) Direct Communications with District Judge or Magistrate Judge

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

4 (8) The Clerk is directed to send a copy of this Order to plaintiff. The Clerk is further
5 directed to send a copy of this Order and a courtesy copy of plaintiff's amended complaint and his
6 application for court-appointed counsel to the Washington Attorney General's Office.

7 Dated this 9th day of February, 2018.

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Mary Alice Theiler
10 United States Magistrate Judge