

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) 1:06-cr-00080-JAW
)
MARK MCCURDY)

**ORDER ON DEFENDANT’S MOTION FOR ORDER TO REQUIRE
GOVERNMENT TO SERVE PETITIONER BY U.S. MAIL**

On January 14, 2013, Mark McCurdy moved for an order to require that the Government mail him a copy of all documents that it files with the Court in his pending cases. *Mot. for Order to Require Gov’t to Serve Pet’r by U.S. Mail* (ECF No. 287). Mr. McCurdy, who is incarcerated, explains that he does not have access to the electronic case filing system and he alleges that the Government “did not serve a copy of its Government’s Response to Defendant’s Motion for Appointment of Counsel.” *Id.* at 1-2. He says that the Government’s failure deprived him of the opportunity to reply to the Government’s response. *Id.* at 2. Oddly, the Government takes no position on this motion. *Letter from Margaret D. McGaughey, Appellate Chief, United States Attorney’s Office to Christa Berry, Cl[e]rk* (Jan. 15, 2013) (ECF No. 289).

The Court reviewed the docket entry for the document Mr. McCurdy says he did not receive: the Government’s Response to Defendant’s Motion for Appointment of Counsel (ECF No. 278). It contains the following certificate of service electronically signed by F. Todd Lowell, Assistant United States Attorney:

I hereby certify that on November 27, 2012, I electronically filed the document(s) with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Jeffrey Silverstein, Esq.
Silversteinlaw.jms@gmail.com

and mailed a copy of the same to:

Mark McCurdy, Inmate #11143-036
FCI Edgefield
PO Box 725
Edgefield, SC 29824

Gov't's Resp. to Def.'s Mot. for Appointment of Counsel at 3 (ECF No. 278). Mr. McCurdy's prisoner number and address in Assistant United States Attorney (AUSA) Lowell's certificate of service are identical to the prisoner number and address in Mr. McCurdy's most recently filed motion. There is no apparent explanation as to why Mr. McCurdy did not receive the document AUSA Lowell certified he sent him.

In mailing Mr. McCurdy a copy of the Government's response, AUSA Lowell was acting in accordance with the requirements of the District's Local Rules. Local Rule 5(c) requires a party to serve papers electronically "[u]nless exempt or otherwise ordered by the Court." D. ME. LOC. R. 5(c). Local Rule 5(c) further says that "[t]he provisions of the Court's Administrative Procedures Governing the Filing and Service by Electronic Means shall be applied and enforced as part of these Local Rules." *Id.* Under those procedures, "pro se litigants who have not registered with ECF shall be served a paper copy of any electronically filed pleading or other document in accordance with the provisions of Fed. R. Civ. P. 5." D. ME. LOC. R.

App. IV, ADMIN. PROCEDURES GOVERNING THE FILING AND SERVICE BY ELEC. MEANS (e)(6) (Revised Dec. 2011). In short, Mr. McCurdy seeks an Order requiring the Government to do what the Local Rules require the Government to do and what the Government says it did. Although there is some redundancy in ordering the Government to do what the rules require, the Court sees no harm in issuing the Order.

Without objection from the Government, the Court GRANTS Mark McCurdy's motion (ECF No. 287) and ORDERS the Government, in addition to filing documents with the Court under the electronic case filing system, to act in accordance with § (e)(6) of this Court's Administrative Procedures Governing the Filing and Service by Electronic Means and to send a copy of any documents so filed to Mark McCurdy by United States mail postage prepaid at his last known address.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 16th day of January, 2013

Defendant (1)

MARK MCCURDY
TERMINATED: 07/21/2009

represented by **MARK MCCURDY**
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