

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

In re WILLIAM KRISSTOFER WOLF,

Petitioner,

Cause No. CV 15-28-BLG-SPW-CSO

ORDER

This matter comes before the Court on Petitioner William Krisstofer Wolf's "demand for habeas corpus." The "demand" states that it was "served" on this Court "via Yellowstone Corrections facility interoffice mail." The Court received the document on April 15, 2015, in an envelope bearing the return address of the Justice Court of Yellowstone County. The document is signed "Wolf" and dated April 1, 2015.

The document refers to Wolf as a "defendant," and Wolf is currently detained at the Yellowstone County Detention Center on a pending federal criminal charge. But the document does not specify the number of the criminal case or indicate in any other way that it is meant to be filed in the criminal case. In addition, the document states that Wolf is acting "by the only means available"; yet counsel was appointed for Wolf in the criminal case on March 26, 2015. For these reasons, the Court directed the Clerk to open a civil case and to file the "demand" as a petition for writ of habeas corpus under 28 U.S.C. § 2241.

If Wolf intends to proceed with an application for writ of habeas corpus, he is advised that the "demand" is not sufficient to permit further proceedings. Three

defects must be remedied.

First, Wolf did not pay the filing fee of \$5.00 or file a motion to proceed in forma pauperis. If he intends to proceed with this matter, he must do so. 28 U.S.C. § 1914(a), (c).

Second, Wolf evidently intends that someone to whom he has given power of attorney should “travel to this Honorable Court to speak in [Wolf’s] behalf.” But “[i]n all courts of the United States, the parties may plead and conduct their own causes *personally* or *by counsel*.” 28 U.S.C. § 1654 (emphasis added); *see also* Judiciary Act of 1789, § 35, 1 Stat. 73, 92 (1789). Consequently, “[a]ny individual acting without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this Court.” D. Mont. L.R. 83.8(a); *see also United States v. Kelley*, 539 F.2d 1199, 1201-03 (9th Cir. 1976). Wolf’s “attorney-in-fact” has no authority to represent Wolf in any proceeding in federal court; only an attorney at law may do that. Therefore, in order to act on Wolf’s behalf in court, Wolf’s attorney-in-fact must appear through a duly qualified attorney who is admitted to the bar of this Court.¹ Alternatively, Wolf

¹ The case Wolf cites, *Whitmore v. Arkansas*, 495 U.S. 149 (1990), *see* Pet. (Doc. 1) at 1, is a “next-friend” case. A petition for writ of habeas corpus was filed not by the prisoner whose death sentence was challenged, Russell Gene Simmons, but by another capital prisoner purporting to act on his own and Simmons’ behalf, James Whitmore. The Supreme Court’s opinion addressed the required elements of next-friend standing and concluded Whitmore did not meet them and so could not petition on behalf of Simmons. The Court did not speak to the issue of representation by an attorney at law versus self-representation, which is the issue here. It is worth noting, however, that Whitmore did not litigate the case personally. He appeared through

may litigate this matter pro se, or he may appear through duly qualified and admitted counsel without an attorney-in-fact. Those are the only three options.

Third, the “demand for habeas corpus” does not set forth any allegations of fact. “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Wolf cannot mount such an attack until he alleges facts he believes demonstrate that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. §§ 2241(c)(3), 2242. If Wolf intends to proceed, he must submit an amended petition alleging such facts and explaining why his custody violates the law.

If Wolf intended to seek a detention hearing in the criminal case that is pending against him, he should discuss this with his attorney, who can file a motion for a detention hearing under the criminal case number, CR 15-20-MJ-BLG-CSO. If Wolf wishes to file the motion on his own, the Court will then need to consider the motion and decide whether to entertain the motion from Wolf personally, notwithstanding his representation by counsel. But the rule that an attorney-in-fact may not act for Wolf in court applies in all federal cases, civil or criminal. *Kelley*, 539 F.2d at 1201-03. Moreover, in the criminal case, Wolf’s attorney-in-fact can play no role at all. Wolf is the person charged.

counsel. *See, e.g., Whitmore*, 493 U.S. 804, 804 (1989); *Simmons v. State*, 766 S.W.2d 423, 424 (Ark. 1989) (per curiam).

Based on the foregoing, the Court enters the following:

ORDER

1. Wolf is allowed until **April 30, 2015**, to respond to this Order. Failure to respond by this date will result in dismissal of this civil action.

2. The Clerk shall include with Wolf's service copy of this Order the Court's standard form for a motion to proceed in forma pauperis.

3. The Clerk also must serve upon Wolf's appointed attorney in CV-15-MJ-20-CSO a copy of this Order and of Wolf's "demand for habeas corpus" (*ECF 1*).

Wolf must immediately notify the Court of any change in his mailing address by filing a "Notice of Change of Address." Failure to do so may result in dismissal of this case without notice to him.

DATED this 16th day of April, 2015.

/s/ Carolyn S. Ostby
United States Magistrate Judge