

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

KENNETH KELLER; ANGIE WOOD; LT. KUSTER;  
LT. KIRBY LINJER; CO. II CAROL COOK;  
PETER ERICKSON; CAPT. BRANT;  
WILLIAM POLLARD; DR. STEVEN SCHMIDT;  
LT. LAMBRECHT; CAPT. BRUCE MURASKI;  
PHIL KINGSTON; DON STRAHOTA;  
CAPT. O'DONOVAN; SGT. VOSS;  
SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA;

Defendants.  
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ORDER

07-C-318-C

Plaintiff Shaheed Taalib'Din Madyun is a prisoner. He paid the fee for filing this lawsuit because he has struck out under 28 U.S.C. § 1915(g) and is no longer eligible for pauper status. In an order entered herein on August 1, 2007, I screened plaintiff's complaint and allowed him to proceed on several claims against the defendants now listed in the caption of this order. In the same order, I denied several other claims and dismissed several other defendants. Immediately thereafter, copies of plaintiff's complaint were sent to the

office of the Attorney General in keeping with this court's informal service agreement, under which the Attorney General will accept service of process for any current state prison official or employee who authorizes the Attorney General to accept service on his or her behalf. Now the office of the Attorney General has notified the court that it has accepted service of plaintiff's complaint on behalf of all of the defendants except defendant Ron Lehman, who is no longer employed by the Department of Corrections. That means that the responsibility for serving Lehman falls back on plaintiff. (The United States Marshal is not responsible for serving process on defendants in civil litigation on behalf of plaintiffs who are not proceeding in forma pauperis. 28 U.S.C. § 1915(d) ("officers of the court shall issue and serve all process. . . in [in forma pauperis] cases.")).

The question, then, is how plaintiff is to serve defendant Lehman. I presume that plaintiff would prefer to seek a waiver of service of a summons from defendant Lehman pursuant to Fed. R. Civ. P. 4(d), as that is the least expensive means of obtaining service of process on a defendant. (When he filed his complaint, plaintiff advised the court that he could not afford the alternative, which is to pay a sheriff or another process server to serve his complaint on Lehman personally. For the purpose of this order, I will assume that plaintiff's financial circumstances have not changed.) A memorandum describing the procedure for obtaining a waiver of service of a summons is enclosed to plaintiff with this order, together with the necessary waiver forms. However, I note that even this inexpensive

method of service will not be easy for plaintiff to accomplish.

Before plaintiff can send a service packet and waiver form to Lehman through the mail, he must know Lehman's current address. Unfortunately, plaintiff is not entitled to learn Lehman's forwarding address through discovery. See Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (recognizing importance of preserving security of former or current prison employees by protecting against dissemination of personal addresses to prisoners). Moreover, there is only a slim possibility that Lehman's address will be accessible in public records or on the Internet. Prison employees often take steps to insure that their personal addresses are not available in such records.

Nevertheless, a plaintiff ordinarily has 120 days after filing a complaint in which to serve the defendants. Fed. R. Civ. P. 4(m). For the purpose of Rule 4(m), a plaintiff's complaint is filed on the date of the screening order permitting the case to go forward. That means that plaintiff's deadline to locate and serve Lehman with his complaint is November 29, 2007. However, that deadline is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. Assuming as I do that plaintiff cannot afford to hire a private investigator or process server to find defendant Lehman, I will set a short deadline within which plaintiff must advise the court whether he intends to attempt to locate Lehman on his own or whether he wishes to dismiss Lehman voluntarily, which dismissal will be without prejudice to plaintiff's pursuing his

complaint against him at a later time. If plaintiff advises the court that he intends to attempt to locate Lehman on his own, he must provide the court with regular periodic updates describing the steps he is taking to locate and serve Lehman. If it is not clear to the court that plaintiff's effort to find Lehman and serve him with process in this case is ongoing and persistent, I will dismiss Lehman without prejudice to plaintiff's filing a new complaint against him at some future time.

#### ORDER

IT IS ORDERED that plaintiff may have until August 30, 2007, in which to advise the court 1) whether he intends to attempt to locate defendant Ron Lehman on his own and the manner in which he intends to proceed to learn Lehman's address; or 2) that he wishes to dismiss Lehman voluntarily, without prejudice to his filing a new lawsuit against him at some future time.

Further, IT IS ORDERED that if, by August 30, 2007, plaintiff fails to respond to this order, I will dismiss defendant Lehman from the action for plaintiff's failure to prosecute him.

Finally, IT IS ORDERED that if, by August 30, 2007, plaintiff advises this court that he will attempt to locate defendant Lehman on his own, he is to continue to provide the court with an update every two weeks thereafter, describing the steps he has taken to locate

and serve Lehman. If at any time before November 29, 2007, it becomes clear to the court that the effort to find Lehman is not ongoing and persistent, I will dismiss Lehman without prejudice to plaintiff's filing a new complaint against him at some future time.

Entered this 20th day of August, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge