

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

RONNIE FAMOUS,

Plaintiff,

v.

ORDER

12-cv-144-wmc

DOE ZOHIA, RICHARD HEIDORN,
DOE WATERFORD, JANE DOE NURSE,
JAMES WONG, ANDREW KESSLER,
KATHY BRESTER, JEANANNE ZWIERS,
DAVE BURNETT and JAMES RICHARDS¹,

Defendants.

In an order entered on April 6, 2012, this court granted plaintiff's request to proceed on his Eighth Amendment deliberate indifference and state law negligence claims. The Attorney General's office has accepted service of plaintiff's complaint on behalf all of the defendants except defendants Zohia, Waterford, Wong, Richards and nurse Jane Doe . The clerk of court has prepared Marshals Service and summons forms for Zohia, Waterford and Richards and is forwarding copies of the complaint and completed forms to the United States Marshal for service.

In completing the Marshals Service forms, the clerk has not provided forwarding addresses for the defendants Zohia, Waterford and Richards because this information is unknown. It will be up to the marshal to make a reasonable effort to locate defendants by contacting the defendants' employers or conducting an Internet search of public records for the defendant's current addresses or both. *See Sellers v. United States*, 902 F.2d 598, 602 (7th Cir.

¹I have amended the caption to replace Doe Wong with the name James Wong and the Doe Brests Nurse with the name Kathy Brester as identified in the Acceptance of Service.

1990) (once defendant is identified, marshal to make reasonable effort to obtain current address). Reasonable efforts do not require the marshal to be a private investigator for civil litigants or to use software available only to law enforcement officers to discover addresses for defendants whose whereabouts are not discoverable through public records.

Also, for plaintiff's information, in *Sellers*, the court of appeals recognized the security concerns that arise when prisoners have access to the personal addresses of former or current prison employees. *Sellers*, 902 F.2d at 602. For this reason prison employees often take steps to insure that their personal addresses are not available in public records accessible through the Internet. If the marshal is successful in obtaining the defendants' personal addresses, he is to maintain that address in confidence rather than reveal it on the marshals service forms, because the forms are filed in the court's public file and mailed to the plaintiff after service is effected.

Regarding defendant James Wong, the Attorney General's office has not accepted service on Wong's behalf because he is deceased. Federal Rule of Civil Procedure 25(a)(1) sets forth the procedure that must be followed when a party to a lawsuit dies:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

It is up to plaintiff to determine whether he intends to pursue his lawsuit against defendant Wong's estate and, if so, to move the court for substitution of the parties. If plaintiff moves for substitution of the parties, he must provide the court with the name and address of the person who should be served with his complaint against the estate. Although Rule 25 allows the parties 90 days to move for substitution, if plaintiff acts diligently, he should be able to make his

motion or notify the court of his willingness to dismiss his claims against defendant Wong before the 90-day time period has run. Plaintiff will have until May 31, 2012 to advise the court in writing whether he intends to dismiss his claims against defendant Wong or move to substitute defendant Wong's estate as a defendant.

Finally, pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, the Department has agreed to accept electronic service of documents on behalf of the defendants it represents. This means that for the remainder of this lawsuit, plaintiff does not have to send a paper copy of each document he files with the court to the Department or defendants Heidorn, Kessler, Brester, Baenen, Zwiers and Burnett. The Department will access the document through the court's electronic filing system.

However, because the Department is not representing defendants Zohia, Waterford and Richards, plaintiff will still be required to send counsel for these defendants paper copies of each document he files with the court. In addition, once the identity of Nurse Jane Doe has been ascertained, the Department will decide whether to accept service on her behalf. When the Department makes that decision, the court will explain further how plaintiff is to serve this defendant.

Discovery requests or responses are an exception to the electronic service rule. Usually, those documents should be sent directly to counsel for the opposing party and do not have to be sent to the court. Discovery procedures will be explained more fully at the preliminary pretrial conference.

ORDER

IT IS ORDERED that:

- (1) The U.S. Marshal shall make reasonable efforts to locate defendants Zohia, Waterford and Richards and, if his efforts are successful to serve these defendants with a copy of the summons and complaint in this case. If the Marshal is unsuccessful in locating any of these defendants despite making reasonable efforts to locate them, he may file an unexecuted return on which he describes the efforts he made.
- (2) No later than May 31, 2012, plaintiff is to advise the court in writing whether he intends to dismiss his claims against defendant or move to substitute defendant Wong's estate as a defendant. If plaintiff advises the court that he will move for substitution of the parties, he should be prepared either to provide the name and address of the person to be served with his complaint on behalf of defendant Wong's estate or to advise the court of his progress in learning the name of such individual.

Entered this 18th day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge