

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

TONY WALKER, individually and
behalf of all others similarly situated,

Plaintiff,

v.

DANIEL R. BERTRAND, JEFFREY JAEGER,
MICHAEL DELVAUX, LAURIE WEIER,
WENDY BRUNS and JENNIFER VOELKEL,

Defendants.

ORDER

00-C-0350-C

A telephone status conference was held in this case on November 7, 2002, before United States District Judge Barbara B. Crabb in response to a motion for a preliminary injunction filed by plaintiff Tony Walker. Plaintiff participated on his own behalf. Defendants appeared by assistant attorney general Thomas Dawson.

During the course of the conference, plaintiff requested permission to withdraw his motion for a preliminary injunction in this case. I granted that request.

As in plaintiff's other cases, plaintiff filed a "Motion for Court to Order U.S. Marshal to Serve All Process on All Named Defendants," in which he sought formal service of process of his complaint on defendants Daniel Bertrand, Jeffrey Jaeger, Michael Delvaux, Laurie Weier and Wendy Bruns in place of service accomplished on these defendants through the informal service agreement between the

court and the Attorney General's office. For the reasons expressed in the order entered today in Walker v. Litscher, 02-C-135-C, plaintiff's motion as it relates to defendants Daniel Bertrand, Jeffrey Jaeger, Michael Delvaux, Laurie Weier and Wendy Bruns will be denied as unnecessary. However, plaintiff asks also that this court order the United States Marshals Service to attempt to re-serve process on Jennifer Voelkel, who is no longer an employee of the Department of Corrections and therefore, is not a person for whom the Attorney General had accepted informal service of process. The court's record shows that plaintiff completed a Marshals Service form for defendant Voelkel, listing her former address at the Green Bay Correctional Institution rather than her new place of employment, if she has one, or her residence. Presumably, plaintiff was unable to obtain information about this proposed defendant's current whereabouts because of Department of Corrections' rules that prevent inmates from obtaining personal information about current or former employees. The Marshals Service form shows also that when a deputy marshal attempted to serve Voelkel at the Green Bay Correctional Institution, he was advised that she no longer worked there. He has written in the comments section of the form, "Not an employee of Green Bay C.I., they wouldn't/couldn't tell me where she might be employed." There is no indication whether the marshal attempted to learn defendant Voelkel's home address.

The Court of Appeals for the Seventh Circuit has ruled that a prisoner is required to furnish the United States Marshals Service with no more than the information necessary to identify prison employee defendants and that once the employee is properly identified, it is up to the marshal to make a reasonable effort to obtain a former prison employee's current address and effect service on the basis of that information. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990). In Graham v. Satkowski, 51

F.3d 710 (7th Cir. 1995), the court of appeals reiterated this holding, finding that it was improper for a district court to dismiss a prisoner plaintiff's claims against a former Department of Corrections' employee who no longer worked at the prison address provided by the prisoner because there was nothing in the record to show that the marshal had made an effort to learn the defendant's new location.

Citing its holding in Sellers, the court noted that

the use of marshals to effect service alleviates two concerns that pervade prisoner litigation, state or federal: 1) the security risks inherent in providing the addresses of prison employees to prisoners; and 2) the reality that prisoners often get the "runaround" when they attempt to obtain information through governmental channels and needless attendant delays in litigating a case result.

The court of appeals directed the district court on remand to "evaluate the Marshals Service's efforts and the adequacy of the state disclosure procedures in light of Sellers."

In this case, it is not possible to make out from the deputy marshal's notation on the service form why the institution refused to provide the deputy marshal with information about Voelkel's new address. If it "wouldn't" give Voelkel's new work or home address because it did not want that information to appear on the service form, a copy of which would be returned to plaintiff, then the deputy was free to alleviate that concern by omitting the address on the form. In that case, it will be necessary for the marshal to attempt to re-serve the complaint before I would not be satisfied that a reasonable effort to serve Voelkel has been made. If, however, the institution "couldn't" provide the information because it did not have it, then the deputy marshal will not be required to attempt to re-serve the complaint and I will dismiss defendant Voelkel from this case without prejudice. Therefore, I will ask the Marshals Service to advise the court writing in greater detail of its effort to serve defendant Voelkel and the reason

for its inability to do so.

One final matter needs to be addressed. Plaintiff seeks to prosecute this action on behalf of “all others similarly situated.” I construe plaintiff’s caption as a motion to certify his case as a class action. In order to certify a class action, the court must find, among other things, that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). I cannot make this finding in the present action because plaintiff is not represented by an attorney. Since absent class members are bound by a judgment whether for or against the class, they are entitled at least to the assurance of competent representation afforded by licensed counsel. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also Ethnic Awareness Organization v. Gagnon, 568 F. Supp. 1186, 1187 (E.D. Wis. 1983); Huddleston v. Duckworth, 97 F.R.D. 512, 51415 (N.D. Ind. 1983)(prisoner preceeding pro se not allowed to act as class representative). Consequently, class certification will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff Tony Walker’s motion for a preliminary injunction is DENIED as moot.
2. Plaintiff’s motion to order the United States Marshals Service to serve all defendants is DENIED with respect to defendants Daniel Bertrand, Jeffrey Jaeger, Michael Delvaux, Laurie Weier and Wendy Bruns.

3. Plaintiff's motion for class certification is DENIED.

4. The United States Marshals Service may have until November 27, 2002, in which to explain in writing the efforts it made to serve defendant Jennifer Voelkel. The Marshals Service should advise the court what inquiries it made at the address provided by plaintiff and what the response was to those inquiries.

Entered this 12th day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge