IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS L. SCHROEDER,

                         Plaintiff,   ORDER

          v.   03-C-0299-C

TONY GOTH,
MARK THOMPSON and
JON RYAN PETERSON,

                         Defendants.

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      In an order dated July 9, 2003, plaintiff was granted leave to proceed <u>in</u> <u>forma</u> <u>pauperis</u> against defendants Goth, Thompson and Peterson on his claim that while he was housed at the Rock County jail in Janesville, Wisconsin, defendant Thompson used excessive force against him and defendants Goth and Peterson failed to intervene. The court's record reflects that defendants Goth and Thompson were served with plaintiff's complaint on August 5, 2003. However, the United States Marshals Service had notified the court that it cannot serve defendant Peterson with plaintiff's complaint because this defendant is no longer employed at the Rock County jail.

      According to the deputy marshal's notation on the relevant service form, it is not clear whether the marshal has taken reasonable steps to obtain the defendant's current addresses.

The remarks section of the form reads as follows: "8/5/03 - Per chief deputy Tellefson, subject no longer works at the Sheriff's Dept. Could not find any records on subject. Chief Deputy believes that subject did not make his probation period and could give no further info on subject."

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'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.

Graham, 51 F.3d at 713. 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 <u>Sellers</u>." <u>Id</u>.

Because it is not clear in this case whether the marshal made a reasonable effort to locate defendant Jon Ryan Peterson beyond asking Chief Deputy Tellefson to check the jail's personnel records, I will require him to submit additional information about his efforts to locate Peterson and, if those efforts did not include an Internet search of public records for defendant Peterson's current address, I will require the marshal to pursue this avenue and advise the court of the results of the effort in the remarks section of the process receipt and return the form.

In requiring the United States Marshals Service to conduct its own investigation of a former prison employee's whereabouts, I am mindful of the limited resources available to the service. The additional step I am asking the marshal to take is not unduly time consuming. Indeed, I do *not* understand the court of appeals to suggest, nor do I suggest, that the marshal is to be a private investigator for civil litigants or that he is to use software available only to law enforcement officers to discover addresses for defendants whose whereabouts are not discoverable through public records. Reasonable efforts require only that the marshals service use a public Internet website to search for a defendant's address and, as the marshal already has done, contact the former employee's employer to obtain a forwarding address if the employer is willing to give it. Because it is not clear whether the marshal has taken the step of searching the Internet to locate defendant Peterson, I am

requesting the marshal either to amend the service process receipt and return form to indicate that he performed this search if he did, or if he did not, to take that additional step. Either way, the marshal is to advise the court and plaintiff no later than September 5, whether he has been able to locate defendant Peterson through the Internet.

One final comment is necessary. As the marshal is aware, in <u>Sellers</u>, the Court of Appeals for the Seventh Circuit recognized the serious security concerns that arise when prisoners have access to the personal addresses of former or current prison employees. <u>Sellers v. United States</u>, 902 F.2d at 602. For this reason many, if not all, prison employees may 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 defendant Peterson's personal address, it should take great care to maintain that address in confidence rather than reveal it on the marshals service form, copies of which are filed in the court's public file and mailed to the prisoner.

ORDER

IT IS ORDERED that the United States Marshal may have until September 5, 2003, in which to submit additional information to the court about his efforts to locate defendant Peterson to serve him with plaintiff's complaint. If those efforts did not include an Internet search of public records for defendant Peterson's current address, the marshal is to pursue this avenue and advise the court in the remarks section of the process receipt and return

form if that effort was unsuccessful.

Entered this 28th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge