

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

JOSEPH D. KOUTNIK,

Plaintiff,

MEMORANDUM

v.

03-C-345-C

GERALD BERGE, JON E. LITSCHER,
CAPTAIN LINJER, CAPTAIN BLACKBOURN
and C.O. LEIN,

Defendants.

The United States Marshal has filed a “Process Receipt and Return” form showing that he has been unable to locate defendant C.O. Claude Lein to serve him with plaintiff’s complaint. According to the notations on the form, Lein terminated his employment with the Department of Corrections in October of 2001. He has no phone listing. The address shown for Lein on the Internet is a vacant lot. Department of Corrections records show a Blue River address for defendant and no other forwarding address. The postmaster in Blue River has advised the marshal that Lein moved “a long time ago” and that there is no forwarding address on file.

I conclude that the United States Marshal has made a reasonable effort to locate

defendant Lein and has been unsuccessful. See Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal to make reasonable effort to obtain current address).

A plaintiff cannot maintain a lawsuit against a defendant who has not received notice of the claim against him and is therefore unable to defend against allegations of wrongdoing. Instead, the action must be dismissed as to defendant Lein, without prejudice to plaintiff's filing a new action against him at some future time if he is able to locate Lein to serve him with his complaint.

ORDER

IT IS ORDERED that defendant C.O. Claude Lein is DISMISSED from this action, without prejudice to plaintiff's filing a lawsuit against him sometime in the future.

Entered this 23rd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge