

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

ROBERT D. McGRATH,

Plaintiff,

v.

LENARD WELLS and
LAURA MOFFIT,

Defendants.

ORDER

06-C-343-C

While he was a prisoner at the Oakhill Correctional Institution in Oregon, Wisconsin, plaintiff Robert McGrath filed this lawsuit by paying the full filing fee. In an order entered on July 17, 2006, I screened plaintiff's complaint and allowed him to proceed on his claim that defendant Lenard Wells, the former chair of the Wisconsin Parole Commission, violated his right to equal protection by treating him less favorably than other similarly situated parole applicants. Later, on plaintiff's motion for reconsideration, I allowed plaintiff to proceed on a second claim that defendant Laura Moffit violated his right to substantive due process by arbitrarily altering the offense dates listed on his judgment of conviction. At that time, I instructed plaintiff to serve his complaint on defendants Wells and Moffit, first by

attempting to obtain waivers of service of a summons upon them as allowed under Fed. R. Civ. P. 4(d) and, if service could not be accomplished in this manner, by serving the defendants individually with a summons and complaint as provided in Rule 4(c).

At some point plaintiff was released from prison. He has now written the court to inform it that the complaint and request for waiver of service of a summons he sent to defendant Wells have been returned to him by someone at the Wisconsin Parole Commission, where plaintiff apparently mailed the complaint and waiver form addressed to Wells. A letter accompanying the packet erroneously advises plaintiff that he should file his complaint with this court. In his letter to the court, plaintiff asks whether he is to attempt to serve his complaint on defendant Wells personally pursuant to Fed. R. Civ. P. 4(c), despite his belief that Wells “would most likely send me back the complaint again.”

If, as is the case, defendant Wells no longer works for the Wisconsin Parole Commission, it was not proper for plaintiff to attempt to serve his complaint on Wells by mailing it to the Wisconsin Parole Commission. Plaintiff should have mailed his complaint packet to Wells at Wells’s home address. There is no reason to believe that if plaintiff mails his complaint and request for waiver of service of a summons to Wells at Wells’s home address, Wells will return the complaint to plaintiff. However, I am mindful that in Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990), 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. The concerns are no less serious when the defendant is a former member of the Wisconsin Parole Commission. For this reason many, if not all, parole commission members may take steps to insure that their personal addresses are not available in public records accessible through the Internet. This appears to be true of defendant Wells. The court's search of the Internet does not reveal his home address.

At this point, plaintiff has two options. He can hire a private investigator to locate defendant Wells to effect service of plaintiff's complaint on him. This path most likely will be both expensive and time-consuming. Alternatively, plaintiff may file with the court and serve on defendant Moffit a motion for leave to proceed in forma pauperis for the purpose of serving his complaint on defendant Wells. If plaintiff chooses this route, he must complete and return the form for an affidavit of indigency that I am enclosing to him with a copy of this order. If the court finds from the affidavit that plaintiff qualifies for indigent status, I will ask the United States Marshal to make a reasonable effort to obtain defendant Wells's current address by contacting the Wisconsin Parole Commission to learn whether the address is on file and whether the commission is willing to provide it to the marshal. Plaintiff should understand that if the marshal were to locate defendant Wells, the marshal would be required to hold Wells's 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 plaintiff.

Graham v. Satkowski, 51 F.3d 710, 713 (7th Cir. 1995) (use of marshals to effect service alleviates security risks in providing addresses of prison employees [or parole commission members] to prisoners).

ORDER

IT IS ORDERED that plaintiff may have until September 20, 2006, in which to either 1) advise the court whether he will hire a private investigator to attempt to obtain defendant Wells's address and to serve Wells with plaintiff's complaint; or 2) serve on defendant Moffit and file with the court a motion for leave to proceed in forma pauperis for the purpose of serving his complaint on defendant Wells, together with an affidavit in support of the motion. A blank form for an affidavit of indigency is enclosed to plaintiff with a copy of this order.

Further, IT IS ORDERED that if, by September 20, 2006, plaintiff fails either to move for leave to proceed in forma pauperis or advise the court that he has hired a private investigator to locate defendant Wells, I will dismiss defendant Wells from this lawsuit

without prejudice to plaintiff's filing a new lawsuit against him at some future time.

Entered this 11th day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge