

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

EDWIN GONZALES,

ORDER

Plaintiff,

07-C-144-C

v.

DR. BOB BEVARD and NURSE STEVE HELGERSON,

Defendants.

Plaintiff Edwin Gonzales is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. He is proceeding in this case pro se, but not in forma pauperis. (Plaintiff's trust fund account statement showed that he does not qualify financially for pauper status.) At the time I granted plaintiff leave to proceed on his Eighth Amendment claim against the defendants, I utilized the informal service agreement between this court and the office of the Attorney General, under which the Wisconsin Department of Justice will seek to obtain authority to admit service of process on behalf of defendants in litigation commenced by prison inmates proceeding pro se in the federal district court. The Attorney General accepted informal service of process on defendants Bevard and Helgersen, but declined to accept service for former defendant Sue Ward, because she had left the employ

of the Department of Corrections. At that point, this court asked the United States Marshal to attempt to locate Ward to serve her personally with plaintiff's complaint. That was a mistake. The United States Marshal is not responsible for serving process on defendants in civil litigation on behalf of plaintiffs who are not proceeding in forma pauperis. 28 U.S.C. § 1915(d) ("officers of the court shall issue and serve all process . . . in [in forma pauperis] cases.")

As it turned out, the deputy marshal assigned to serve process was unsuccessful in serving defendant Ward. The only address he could obtain for her from the Department of Corrections was a post office box and the telephone number he was given had been disconnected. U.S. Postal Service Regulations prohibit disclosure of subscriber information to members of the general public. Therefore, the deputy marshal was unable to learn whether the post office box still belonged to defendant Ward. In addition, the deputy marshal conducted an Internet search for defendant Ward for the general area surrounding the Columbia Correctional Institution, with no positive results. Because it was clear that the deputy marshal had made a reasonable effort to locate defendant Ward and had been unsuccessful, I concluded in an order dated May 11, 2007, that she should be dismissed from this action without prejudice to plaintiff's filing a new action against her at some future time.

Now, however, it has come to the court's attention that the Attorney General's office

is representing defendant Ward in another action in this court, Marshall v. Nickel, 06-C-617-C. In that case, defendant Ward filed an answer to the complaint before the Attorney General's office took on her representation. That answer was accompanied by a cover letter containing defendant Ward's post office box address. In the letter, Ward requests that her address be confidential.

Even if it was not a mistake to ask the United States Marshal to attempt to locate defendant Ward to serve her with plaintiff's complaint, I would not have expected the marshal to do more than he did. Reasonable efforts do not require the marshal to investigate whether the Attorney General is representing a defendant in another case and, if so, how the Attorney General might be contacting that defendant.

Although it is plaintiff, and not the United States Marshal, who is responsible for serving defendant Ward, he is in no better position to determine Ward's whereabouts than the deputy marshal was. Nevertheless, it seems unjust to sit on information in the court's files that would allow plaintiff to serve her with his complaint.

Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days from the date his complaint is filed within which to serve a defendant. In this case, plaintiff's complaint was "filed" on March 21, 2007, the date the court entered the screening order allowing him to proceed. That means plaintiff has until July 19, 2007, in which to serve defendant Ward with his complaint. It appears to be in the interest of justice to vacate the order dismissing her to

allow plaintiff to attempt to serve her. But how?

As the parties already are aware, the Court of Appeals for the Seventh Circuit has recognized the importance of preserving the security of former or current prison employees by protecting against the dissemination of their personal addresses to prisoners. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990). That leaves only two options. First, and most preferable, the assistant attorney general representing the defendants in this case, Francis Sullivan, might ask the assistant attorney general representing defendant Ward in the Marshall case, John Glinski, whether Glinski would be willing to contact Ward to ask her for permission to have the Attorney General's office accept informal service of process on her behalf in this case.

Alternatively, plaintiff may prepare a service packet for defendant Ward containing a copy of his complaint and this court's March 21, 2007 screening order, and all the items required under Fed. R. Civ. P. 4(d)(2) to be included in a request for waiver of service of a summons packet. (A copy of the procedure for seeking waiver of service of summons from a defendant in a federal lawsuit is enclosed to plaintiff with a copy of this order, together with forms he will need to complete.) Plaintiff may then place all of the documents in a large envelope with postage affixed for mailing to defendant Ward. He is to mail the packet in an even larger envelope to the court. When the court receives the packet, it will write Ward's address on the envelope and place it in the mail. Ward will then have a reasonable

time within which to return the waiver form to plaintiff, “which shall be at least 30 days from the date on which the request is sent.” Fed. R. Civ. P. 4(d)(2)(F). As soon as plaintiff receives the waiver, he is to make a copy of it and mail the copy to the court so that the record contains proof of service of his complaint on defendant Ward.

ORDER

IT IS ORDERED that

1. The May 11, 2007 order dismissing defendant Sue Ward from this action is VACATED and defendant Ward is reinstated as a party in this case.

2. A copy of plaintiff’s complaint and the order allowing plaintiff to proceed on his claim against defendant Ward is being forwarded to Assistant Attorney General Francis Sullivan for the purpose of ascertaining through Assistant Attorney General John Glinski whether Ward is willing to grant permission to have the Attorney General’s office accept informal service of process on her behalf in this case.

3. Assistant Attorney General Francis Sullivan may have until June 8, 2007, within which to advise the court and plaintiff whether defendant Ward has agreed to the informal service arrangement in this case.

4. If, by June 8, 2007, Assistant Attorney General Francis Sullivan advises the court and plaintiff that defendant Ward does not agree to permit the Attorney General’s office to

accept informal service of process on her behalf in this case, plaintiff may have until June 18, 2007, in which to prepare a service packet for defendant Ward as discussed above, complete with the necessary postage, and return the packet to the court for mailing.

Entered this 29th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge