

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

ANTONIO J. SMITH,

Plaintiff,

v.

ORDER

Case No. 18-cv-385-jdp

JOSHUA KOLBO, BROCK LISNEY-STELDT,
MATTHEW PECKHAM, RICKY STILWELL,
DANIEL SUTHERS, JOSHUA BROWN,
TODD BRESEE, STEPHEN SCHNEIDER,
STEVE ECK, WAYNE PRIMMER,
JARED HUNT, NICOLE LOOMIS,
REBECCA EAGLEBURGER,
MICHAEL SNYDER, BRIAN LANGE,
PATRICK GOVIER, DOE ATWOOD and
MICHAEL HANFELD¹,

Defendants.

In an order entered on July 18, 2018, plaintiff Antonio J. Smith was granted leave to proceed *in forma pauperis* against defendants Kolbo and John Doe defendants. On October 23, 2018, a pretrial conference order was entered giving plaintiff a deadline of December 17, 2018 to submit an amended complaint naming the Doe defendants in this case. On November 21, 2018, plaintiff filed an amended complaint naming the Doe defendants as Joshua Kolbo, Brock Lisney-Steldt, Matthew Peckham, Ricky Stilwell, Daniel Suthers, Joshua Brown, Todd Bresee, Stephen Schneider, Steve Eck, Wayne Primmer, Jared Hunt, Nicole Loomis, Rebecca Eagleburger, Michael Snyder, Brian Lange, Patrick Govier, Doe Atwood and Michael Hanfeld. Now the Wisconsin Department of Justice (DOJ) has filed an acceptance of service indicating that it accepts service on behalf of all defendants, except for defendant Doe Atwood because it is unable to identify this defendant, and defendant Michael Hanfeld because he is deceased.

¹ I have amended the case caption to include the full name of defendant Joshua Kolbo as identified in the Acceptance of Service.

The court will construe the DOJ's statement regarding Hanfeld as a suggestion of death pursuant to Federal Rule of Civil Procedure 25(a).

As set forth in *Atkins v. City of Chicago*, 547 F.3d 869, 870-74 (7th Cir. 2008), Rule 25 requires the party filing the suggestion of death to both identify the proper party to be substituted *and* serve that individual with the notice. Until proper service is effectuated, the 90-day deadline is not triggered. *Id.* at 874 (“[N]othing will suffice to start the 90-day clock running except service on whoever is identified as the decedent’s representative or successor.”). The DOJ may have an opportunity to identify the proper party to be substituted and then to serve the notice on that party. Once that occurs, plaintiff will have 90 days to file a motion for substitution.

Pursuant to the informal service agreement between the DOJ and this court, the DOJ has agreed to accept electronic service of documents on behalf of the defendants it represents. This means that for the remainder of this lawsuit, plaintiff does not have to send a paper copy of each document filed with the court to the court to the Department or defendants Joshua Kolbo, Brock Lisney-Steldt, Matthew Peckham, Ricky Stilwell, Daniel Suthers, Joshua Brown, Todd Bresee, Stephen Schneider, Steve Eck, Wayne Primmer, Jared Hunt, Nicole Loomis, Rebecca Eagleburger, Michael Snyder, Brian Lange and Patrick Govier. The Wisconsin DOJ will access the document through the court’s electronic filing system.

As for defendant Doe Atwood, the parties might be able to hash out the correct identity with minimal effort. Smith does not say how he arrived at that name for one of the Doe defendants, but presumably he did so after reviewing discovery responses from the state. The court will give Smith a short time to respond to his order, explaining whether he still wishes to

bring a claim against Atwood, and if so, explaining what information he used to arrive at that name.

ORDER

IT IS ORDERED that:

1. The Wisconsin Department of Justice may have until **February 14, 2019**, to serve the proper person with notice of death or show cause why they are unable to do so. Once the Wisconsin DOJ files proof of service, plaintiff will have 90 days to file a motion for substitution.
2. Plaintiff may have until **February 7, 2019**, to respond to this order regarding defendant Doe Atwood.

Entered this 23rd day of January, 2019.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge