

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

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NATHANIEL ALLEN LINDELL

Plaintiff,

ORDER

v.

02-C-473-C

JOANNE GOVIERE and  
TIMOTHY HAINES,

Defendants.

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Plaintiff petitions the court to issue a writ of habeas corpus ad testificandum requiring William F. West, an inmate at the Wisconsin Secure Program Facility, and Thomas Reimann, an inmate at the Jackson Correctional Institution, to attend his May 9, 2005, trial as witnesses. Plaintiff avers that both inmates were on the same tier with him and heard defendant Goviere's sexually harassing comments and plaintiff's complaints to defendant Haines about Goviere's behavior.

Plaintiff's request will be denied without prejudice to his renewing it with the proper support. This court's Procedures for Calling Witnesses to Trial, which was enclosed to petitioner with the magistrate judge's preliminary pretrial conference order dated

September 9, 2004, sets out the procedure plaintiff was to follow in requesting incarcerated witnesses. In particular, the procedure states,

An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot come to court unless the court orders the warden or other custodian to permit the witness to be transported to court. This court will not issue such an order unless it is satisfied 1) that the prospective witness is willing to attend; and 2) that the prospective witness has actual knowledge of relevant facts.

The willingness of a prospective witness can be shown in one of two ways.

1. The party himself or herself can swear by affidavit that the prospective witness has informed the party that he or she is willing to testify voluntarily; that is, without being subpoenaed and without receiving a witness fee. The party must state in the affidavit when and where the prospective witness informed the party of this willingness.

OR

2. The party can serve and file an affidavit sworn to by the prospective witness, in which the witness states that he or she is willing to testify without being subpoenaed and without receiving a witness fee.<sup>1</sup>

(Footnote added). Plaintiff's affidavit satisfies the procedure's requirement that he show that the prospective witnesses have actual knowledge of relevant facts. However, he has not sworn when and where the witnesses informed plaintiff of their willingness to testify voluntarily, if they did, or supplied the witnesses' affidavits expressing their willingness to

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<sup>1</sup>Pursuant to 28 U.S.C. § 1821, as amended by the Incarcerated Witness Fees Act, a witness who is incarcerated at the time he testifies may no longer receive witness fees. 28 U.S.C. § 1821(f) (1992).

testify. Until plaintiff satisfies this provision of the procedures, his request for the issuance of writs of habeas corpus ad testificandum for inmates West and Reimann must be denied.

ORDER

Plaintiff Nathaniel L. Lindell's request for writs of habeas corpus ad testificandum for the attendance of inmates William F. West and Thomas Reimann at plaintiff' trial is DENIED without prejudice.

Entered this 7th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge