

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

-----  
THOMAS W. REIMANN,

Plaintiff,

v.

DAVID ROCK, ELIZABETH TEGELS,  
CATHERINE FARREY, JOHN PAQUIN,  
and NANCY TIERNEY,

Defendants.  
-----

ORDER

05-C-501-C

This case is presently scheduled for trial on November 6, 2006 on plaintiff Thomas Reimann's claim that defendant David Rock violated plaintiff's Eighth Amendment protection against cruel and unusual punishment when he deliberately reduced plaintiff's pain medication simply to cause plaintiff pain. However, because of congestion in the court's calendar, it will be necessary to move the trial one week to Monday, November 13, 2006. In preparing for trial, plaintiff has filed the following motions that are presently before the court: 1) a motion for the issuance of writs of habeas corpus ad testificandum for three incarcerated witnesses; 2) a third motion for appointment of counsel; 3) a motion for a change in the trial date to a time after plaintiff is released from segregated status at the

Columbia Correctional Institution; and 4) a motion for an order directing prison officials to increase his access to legal research materials and provide him a typewriter. All of plaintiff's motions will be denied except his motion for the issuance of a writ of habeas corpus ad testificandum for inmate William Grunwald.

#### A. Witnesses

In a document titled "Verified Witness List," plaintiff names three incarcerated individuals he wishes to call as witnesses, Jay Fineday, Mark Hall and William Grunwald, and avers under penalty of perjury that all three inmates are willing to testify voluntarily at trial. The court's witness procedures require a plaintiff seeking to call incarcerated witnesses at trial to file an affidavit in which plaintiff states when and where each witness told him he was willing to appear at trial voluntarily. Plaintiff has not filed such an affidavit. Even if he had, I would deny his request for these two witnesses.

A court may issue a writ of habeas corpus commanding the presence of an incarcerated person at court proceedings where the prisoner's presence is necessary for a full and fair hearing of the claim. Ford v. Carballo, 577 F.2d 404 (7th Cir. 1978); Stone v. Morris, 546 F.2d 730 (7th Cir. 1976). However, a court may refuse to bring inmate witnesses to court if it finds that their testimony will be irrelevant or redundant. See United States v. Solina, 733 F.2d 1208, 1213 (7th Cir. 1984). In determining whether an inmate's

presence is necessary, the court must weigh the interests in having the prisoner in court against the state's interest in avoiding the risk and expense of transporting the prisoner. In re Warden of Wisconsin State Prison, 541 F.2d 177, 179 (7th Cir. 1976).

Plaintiff states that Fineday and Hall are incarcerated at Stanley Correctional Institution and that they would testify that defendant Rock failed to provide them with proper medical care. Plaintiff asserts that Fineday will testify that defendant Rock discontinued Fineday's pain medication without examining him and against the orders of a University of Wisconsin pain specialist and that inmate Hall will testify that defendant Rock discontinued Hall's seizure medication, causing him to have uncontrolled seizures.

Under the Federal Rules of Evidence, generally, "[a]ll relevant evidence is admissible" and "[e]vidence which is not relevant is inadmissible." Fed. R. Evid. 402. Relevant evidence is defined under the Rules as "evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. However, several evidentiary rules limit the admissibility of otherwise relevant evidence.

Rule 404 prohibits a litigant from introducing evidence of a party's character, whether in the form of personality flaws or prior bad acts, for the purpose of proving "action in conformity therewith." In simpler terms, Rule 404 bars testimony that is meant to suggest that because a party has acted badly before, he acted badly on the occasion in question.

Therefore, to the extent that plaintiff seeks to prove that defendant Rock was deliberately indifferent to him by offering testimony that defendant Rock was deliberately indifferent to other prisoners on other occasions, the proposed evidence is inadmissible under Rule 404.

With respect to inmate Grunwald, plaintiff avers that Grunwald will testify that he overheard a conversation between defendant Rock and plaintiff, in which defendant Rock told plaintiff that he was “really starting to piss [Rock] off.” Unlike the testimony of Fineday and Hall, Grunwald’s testimony appears to be limited and directly relevant to plaintiff’s argument that defendant reduced his medication out of animus rather than for a legitimate medical purpose. Therefore, I will issue a writ of habeas corpus testificandum for inmate Grunwald on the condition that, no later than October 30, 2006, plaintiff submits an addendum to his affidavit in which he states when and where inmate Grunwald told plaintiff that he was willing to testify voluntarily at plaintiff’s trial.

#### B. Appointment of Counsel

Plaintiff moved on two previous occasions for appointment of counsel in the pending case. I denied his motions in orders dated December 2, 2005 and May 26, 2006 and denied a motion for reconsideration of his first motion on December 20, 2005. For the reasons explained in detail in the May 26 order, plaintiff’s third motion for appointment of counsel will be denied.

C. Motions for Change in Trial Date and for Orders Granting Plaintiff Access to a  
Typewriter and Legal Research Materials

On October 8, 9 and 11, 2006, plaintiff filed documents with the court complaining of his inability to prepare for trial. In these documents, he suggests that because he is in segregated confinement for his refusal to cell with “21-year gang members,” he has only limited access to legal research materials such as the “key digest on prisons,” the “prisoner’s self-help litigation manual” and “all other ‘how to’ books.” He states that he is not being allowed to use the law library and, instead, is given access two hours a week to a book cart with outdated research materials on it. He states also that because he has nerve damage in his hands, he is having difficulty writing with the “ink tube” he has been given. For this reason, he believes the court should direct prison officials either to allow him access to a typewriter or to grant him access to the main law library on Saturday or Sunday nights “or even grant him a reprieve so he can start serving the rest of his 60 days [disciplinary segregation] in another couple of weeks.” Finally, he requests that his trial date be delayed until he is out of segregation and has access to a typewriter and the main law library at Columbia Correctional Institution.

I do not understand why plaintiff thinks he needs legal research materials at this juncture in his lawsuit. His case is beyond the stage when case law is of primary concern. This court has issued an opinion on defendant’s motion for summary judgment, which both

parties briefed with substantial references to relevant case law. The law relating to claims of deliberate indifference to serious medical needs is well settled. At this stage, plaintiff's focus should be on gathering together his factual evidence and making notes to assist him in his opening and closing arguments, his questioning of the witnesses and his own testimony. He does not need to refer to case law to do any of these things. To the extent that plaintiff is concerned that he does not have access to books that will help him prepare proposed jury instructions, voir dire questions and a verdict form, I am attaching to this order a sample of a verdict form, voir dire questions and jury instructions that were used in this court in another case in which the plaintiff, a prisoner, claimed deliberate indifference to his serious medical needs. Plaintiff may refer to these documents in preparing his pretrial submissions. Plaintiff's motion for an order requiring prison officials to grant him access to the main law library on Saturday or Sunday nights or "a reprieve so he can start serving the rest of his 60 days [disciplinary segregation] in another couple of weeks" will be denied.

Likewise, plaintiff's motion for an order requiring prison officials to grant him access to a typewriter will be denied. Plaintiff's alleged discomfort with writing with an "ink tube" is questionable, given his frequent and repetitious filings with this court. As noted above, he would do better to buckle down to the business of preparing his opening and closing remarks, his testimony and the questions he wants to ask of his witnesses and to gathering together his evidentiary materials than attempting to obtain orders seeking a change in the

ordinary conditions of segregated confinement.

Finally, plaintiff's motion for a stay of proceedings until he is released from segregated status will be denied. There is no legitimate reason why plaintiff cannot be ready for trial by the new trial date of November 13, 2006.

### ORDER

IT IS ORDERED that:

1. Plaintiff's request for issuance of writs of habeas corpus ad testificandum for inmates Jay Fineday and Mark Hall is DENIED;

2. Plaintiff's request for issuance of a writ of habeas corpus ad testificandum for inmate William Grunwald is GRANTED on the condition that, no later than October 30, 2006, plaintiff submits an addendum to his affidavit in which he avers when and where inmate Grunwald told plaintiff that he was willing to testify voluntarily at plaintiff's trial;

3. Plaintiff's third motion for appointment of counsel is DENIED;

4. Plaintiff's motion for an order requiring prison officials to grant him access to the main law library on Saturday or Sunday nights or "a reprieve so he can start serving the rest of his 60 days [disciplinary segregation] in another couple of weeks" is DENIED;

5. Plaintiff's motion for an order requiring prison officials to grant him access to a typewriter is DENIED; and

6. Plaintiff's motion for a stay of proceedings in this case until he is released from segregated confinement is DENIED.

Further, IT IS ORDERED that because of congestion in the court's calendar, trial of this case is rescheduled for Monday, November 13, 2006. The final pretrial conference will be held at 8:30 a.m. on the morning of November 13, 2006. The parties' pretrial submissions are due no later than November 6, 2006. The Clerk of Court is requested to reissue a writ of habeas corpus ad testificandum for plaintiff's attendance at trial on November 13, 2006 rather than November 6, 2006.

Entered this 18th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge