

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

SHAROME ANDRE POWELL,

Plaintiff,

v.

SERGEANT FINK, LIEUTENANT DURDIN
and CORRECTIONAL OFFICER KOPEHAMER,

Defendants.

ORDER

06-C-58-C

In an order dated September 7, 2006, I denied plaintiff's request for subpoena forms for proposed witness Linda O'Donovan, whom plaintiff intended to call as a trial witness for the sole purpose of authenticating plaintiff's prison medical records. I explained:

Plaintiff does not need O'Donovan's live testimony to authenticate any records or documents he plans to introduce at trial. Assuming the records plaintiff wishes to introduce were created in the regular course of prison business and O'Donovan is the records custodian, as plaintiff asserts, then all plaintiff need do is obtain O'Donovan's affidavit to that effect. Fed. R. Evid. 902(11). There is no need for her to testify in court.

Dkt. #46, at 4.

Now, plaintiff has submitted a letter, supported by convincing documentation, in which he explains that prison officials have refused to authenticate copies of documents he

has obtained from the prison, including his medical records and inmate complaints. The reason? Prison officials object to innocuous notations, such as page numbers, plaintiff has placed on his copies of the documents.

Although it is true that prison officials would be remiss to authenticate records that have been altered from those kept in the regular course of business, it would be fundamentally unfair for the court to require plaintiff to authenticate his documents and then provide him with no means to do so. The potential for injustice is magnified by the fact that defendants themselves are custodians of the records plaintiff seeks to authenticate and trial is one week away. Consequently, I will provide defendants with two options. They may either stipulate to the authenticity of the content of the documents they provided to plaintiff during the course of discovery, see *dk. #40, Exh. 100*, or they may provide him with a fresh copy of the disputed records. The choice is theirs. Either way, I will order defendants to submit a written stipulation or a new copy of the relevant documents to plaintiff and the court by Thursday, September 28, 2006.

ORDER

IT IS ORDERED that defendants may have until Thursday, September 28, 2006, in which to submit to plaintiff and the court a written stipulation to the authenticity of the records disclosed to plaintiff by defendants during discovery or a new, authenticated copy

of the same documents.

Entered this 22nd day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge