

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

LEIGHTON DWIGHT LINDSEY,
Plaintiff,

v.

Captain SALTZER, RYAN ARMSON
and JOSEPH CHICANOWICZ,

Defendants.

ORDER

10-cv-385-bbc

Plaintiff Leighton Lindsey, a prisoner confined at the Waupun Correctional Institution, is proceeding to trial in this case on November 14, 2011 on his claims that defendants Saltzer, Armson and Chicanowicz violated his rights under the Eighth Amendment.

Now before the court is plaintiff's fifth motion for appointment of counsel, a second request for issuance of subpoenas and numerous letters requesting court intervention to obtain documents or other assistance in preparation of trial.

Turning first to plaintiff's request for court appointed counsel, plaintiff has presented no new factual or legal argument that persuade me that he is entitled to appointment of counsel under Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). As the magistrate judge has explained in previous orders, no complicated legal preparation is necessary in this case. The issues for trial are straightforward and relate purely to credibility. Plaintiff alleges that

defendants Armson and Chicanowisz used excessive force against him and that defendant Saltzer failed to intervene to stop the assault. The defendants deny the allegations. The jury will listen to the testimony and decide whom it believes.

Next, plaintiff requests the court to issue five subpoenas for non-party witnesses to his case. Plaintiff's request appears to have crossed in the mail with this court's September 13, 2011 trial preparation order, which details the information plaintiff must provide before this court will issue subpoenas. Specifically, plaintiff must file an affidavit in which he declares under penalty of perjury that the witness refuses to testify voluntarily, that he has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoenas on the witnesses or that he needs assistance from the United States Marshal to serve the subpoenas, and that plaintiff is prepared to give the marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witnesses' mileage, as well as costs for room and meals if the witness's appearance at trial will require an overnight stay. The court cannot waive the costs incurred for a subpoena. McNeil v. Lowney, 831 F.2d1368, 1373 (7th Cir. 1987). Because plaintiff has not provided the necessary information, his requests for the issuance of subpoenas for his non-incarcerated witnesses will be denied at this time.

Finally, plaintiff has filed several letters in which he requests court assistance in obtaining medical records and inmate complaint history from the institution. It appears that plaintiff is seeking to obtain these documents at no charge to him. Plaintiff writes in one

such letter, “I’m indigent and on legal loan. Can you please send me a court order ordering Waupun Correctional Institution’s record office to make copies of my medical file to present as part of my case (evidence). The only way for me to get copies of the medical documents is if I use my legal loan.” Dkt. #94. This is precisely what plaintiff’s legal loan is intended for. There is no rule that requires the institution to provide free copies of documents to litigants, even those like plaintiff who are proceeding in forma pauperis.

Unfortunately for plaintiff, by waiting until the eleventh hour to make his requests for these documents, plaintiff has put himself in the position of being unprepared. Plaintiff has had since November 18, 2010 to obtain evidence in support of his case. At the November 18, 2010 pretrial conference and in the subsequent scheduling order, the magistrate judge explained how a litigant may gather evidence during a federal lawsuit. For example, plaintiff was told that “Rule 34 allows you to ask the defendant to show you documents that are relevant to this lawsuit, but it does not require the defendants to make free photocopies of these documents for you.” Furthermore, the magistrate judge warned plaintiff in the pretrial conference order:

This court will not make copies for you and it will not give you money to make copies. If you are in an institution, you must use your own money or money from your legal loan account to pay for copies. If you have reached your loan limit, or if you think you will reach it during this case, then you must plan accordingly.

Dkt. #27 at 3.

Plaintiff needs to comply with the rules of the institution in using his legal loan to obtain copies of documents. The Department of Corrections has allowed plaintiff an extension of his legal loan for the purposes of completing his pretrial filings and trial exhibits for this case. As plaintiff is aware, discovery in this case does not close until October 14, 2011 and he is free to request documents and information from defendants until the discovery period ends. Accordingly, I will take no action on plaintiff's multitude of requests for court intervention in obtaining documents.

In addition, plaintiff has filed a letter, dkt. #98, in which he asks the court to contact the Waupun Correctional Institution's business office to lift the restriction that limits an inmate from using his legal loan to seek representation from more than three attorneys. This is not the type of extreme scenario in which I would contemplate issuing an injunction against prison staff. If plaintiff could show that prison officials were actively and physically blocking his ability to come to trial or defend against a motion filed by the defendants, I would ask defendants' counsel to look into the matter and report the circumstances to the court. Plaintiff has not made allegations of that sort. He is complaining only that the business office is not assisting his last-minute effort at locating an attorney.

A final matter requires attention. Plaintiff has asked this court to order prison officials at the Wisconsin Secure Program Facility to stop hindering plaintiff's communication with G'esa S. Kalafi-Felton, a prisoner there. Although it is understandable that plaintiff may wish to seek the assistance of another inmate, such assistance is not a requirement to the litigation of this case. Indeed, plaintiff's recent submissions, which he

has presumably filed without the assistance of another inmate, reveal that he is at least as capable as the average pro se litigant to present his claims. Therefore, no court action will be taken on plaintiff's request for the court to interfere in the inmate-to-inmate communication between plaintiff and Kalafi-Felton.

Because trial is nearing, plaintiff should carefully read the September 13 order to guide his trial preparations.

ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey's fifth motion for appointment of counsel, dkt. #90, is DENIED.
2. Plaintiff's requests for issuance of subpoenas, dkts. ##86 and 88, are DENIED without prejudice.
3. Plaintiff's requests for court orders, dkts. ##91-95 and 97-98, are DENIED.

Entered this 30th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge