

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

MICHAEL E. WILLIAMS,

Plaintiff,

v.

LORI ALSUM, STEVE HELGERSON,
DR. DALIA SULIENE, and PAUL KETARKUS,

Defendants.

ORDER

10-cv-433-bbc

Plaintiff Michael Williams has filed a letter dated April 13, 2011, in which he asks the clerk of court to issue five subpoenas for trial witnesses pursuant to Fed. R. Civ. P. 45(a)(3). Plaintiff's request is premature and I am directing the clerk not to issue the requested subpoenas at this time.

Plaintiff's trial is scheduled for November 28, 2011, over seven months from now. Plaintiff does not suggest that he needs the subpoenas for depositions. The dispositive motions deadline is June 27, 2011.

Because it is possible that this case will be resolved with summary judgment, it is too early to issue trial subpoena forms. If plaintiff's case survives dispositive motions or if plaintiff schedules a witness deposition, then he may renew his request for subpoena forms. If he renews his request, then plaintiff should refer to the procedures for calling witnesses to trial that are attached to the preliminary pretrial conference order that was entered on December 23, 2010. In particular, plaintiff should note that even though he is proceeding *in forma pauperis*, he will have to supply any person he subpoenas with the fees for one day's attendance at court and with the mileage payment allowed by law. *See* Fed. R. Civ. P. 45(b)(1); *McNeil v. Lowney*, 831 F.2d 1368, 1373 (7th Cir. 1987); 28 U.S.C. § 1915(d)

(witnesses shall attend as in other cases . . .”). A litigant’s constitutional right of access to the courts does not serve automatically to waive witness fees. Any potential witness who receives a subpoena but does not receive the witness fee and transportation costs may move to quash the subpoena for that failure, and the court would be bound to grant such a motion. That, however, is not today’s concern.

Because plaintiff’s request for subpoena forms is premature, the clerk of court is directed to refrain from sending the requested subpoena forms to plaintiff.

Entered this 19th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge