

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

CHRISTOPHER M. SANDERS,

Plaintiff,

v.

MS. LUNDMARK,

Defendant.

ORDER

11-cv-206-slc

An evidentiary hearing is scheduled in this case for November 10, 2011 to address the question whether plaintiff Christopher Sanders was misinformed by Captain Chada that Sanders could not appeal a disciplinary determination. Sanders has filed a “Motion for Assistance from the Court” in which he asks the court to help secure the appearance of 15 witnesses who he says will corroborate his testimony about what Captain Chada told him. *See* dkt. 54. I construe Sanders’s motion as a request for the issuance of subpoenas. I am denying this request with a small exception, explained below.

As a starting point, Sanders has not complied with this court’s procedures for calling witnesses to trial, as described in detail in this court’s pretrial conference order. Notably, he has not indicated whether he has asked any of these witnesses to testify voluntarily. This might be understandable for the two witnesses who are inmates, because Sanders does not know their names; but for the same reason, this court cannot subpoena them because it has no names to put on the subpoenas.

The remaining 13 witnesses appear to be prison staff, and it was Sanders’s responsibility to ask them if they would appear voluntarily to testify in this matter. Even so, I will not glorify form over substance if any of these staffers had useful testimony to provide. But they don’t, or at least it is not clear that any of them do. Sanders says only that he “spoke with many of them”

while he was filing his ICRS complaint. As for the two incarcerated witnesses, Sanders says they were law clerks at the prison library who tried to help him find out whether what Captain Chada told him was true, that is, whether and how he could appeal the disciplinary determination.

From Sanders's explanations, it appears that none of his proposed witnesses was present to hear Captain Chada allegedly tell Sanders that he could not appeal the disciplinary determination. As a result, Sanders's proposed witnesses do not have any useful testimony that would help the court determine what Captain Chada actually said to Sanders.

To the extent that any witness might testify that Sanders told that witness that Captain Chada told him he (Sanders) could not appeal, such testimony would not be directly admissible to prove the truth of Sanders's statement, but such testimony might be admissible under F.R. Ev. 801(d)(1)(B) to attempt to rebut any argument by the state that Sanders fabricated his story after the fact. (Under the circumstances, this is a bit of a stretch, but I'm willing to give Sanders the benefit of the doubt at this juncture). Because Sanders does not know the names of the inmate witnesses, his best recourse is to let the court and the Assistant Attorney General know as soon as possible which of the staff members will so testify. Since Sanders proffers that "many of these witnesses were appalled at what was happening to me," dkt. 54 at 1, he should be able to identify one or two such witnesses immediately. If he does, then the court would like the state's assistance in assuring the presence of no more than two such witnesses at the November 10 hearing to be available to testify if necessary. But it is up to Sanders now quickly to provide their names.

ORDER

It is ORDERED that Sanders' Motion for Assistance is GRANTED IN PART and DENIED IN PART in the manner and for the reasons stated in this order.

Entered this 2nd day of November, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge