

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

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JEFFREY D. LEISER,

Plaintiff,

v.

BELINDA SCHRUBBE, R.N., *et al.*,

Defendants.

ORDER ON PLAINTIFF'S  
REQUEST FOR  
WRITS AND SUBPOENAS

11-cv-254-slc

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Plaintiff Jeffrey D. Leiser has filed a civil rights complaint under 42 U.S.C. § 1983, alleging that the defendants (Belinda Schrubbe, Charles Larson, Debbie Lemke, Paul Sumnicht, Mark Jensen, Sandy Jackson, Tonia Rozmarynoski, Cynthia Thorpe and Tammy Giese) violated his Eighth Amendment right to receive medical care while he was incarcerated at the Waupun Correctional Institution. The case is proceeding to trial on November 13, 2012. Both parties have submitted witness lists and motions in limine

Now before the court are Leiser's motions for writs of habeas corpus ad testificandum for several incarcerated witnesses. Leiser also requests subpoenas for the defendants and other non-incarcerated witnesses. These requests are discussed separately below.

**Voluntary Incarcerated Witness**

Leiser requests a writ of habeas corpus ad testificandum for a former cellmate, Lonnie Jackson (#133045), who is willing to testify voluntarily about the back injury that Leiser suffered at the Waupun Correctional Institution in 2005, and the defendants' deliberate indifference or failure to treat Leiser for that injury. This motion will be granted and the clerk's office will be directed to issue a writ of habeas corpus ad testificandum for Mr. Jackson.

### **Involuntary Incarcerated Witnesses**

Leiser requests writs of habeas corpus ad testificandum for three other former cellmates at Waupun Correctional Institution: Michael White (#422734), Robert J. Labotte Jr. (#345853) and Antonio Maddox (#242005). Leiser claims that each of these witnesses has “first hand knowledge” that Leiser was denied pain medication and medical treatment while in custody at Waupun Correctional Institution. Leiser also indicates that these witnesses refuse to testify voluntarily. Leiser, who proceeds *in forma pauperis*, has filed a motion asking the United States Marshal to serve these witnesses with subpoenas. These motions will be granted. The clerk’s office will issue writs of habeas corpus ad testificandum and subpoena forms for each witness and provide them to the United States Marshal, who will be directed to serve them.

A word of caution: it is not clear from Leiser’s submissions whether these witnesses actually agree with Leiser’s proffer of their trial testimony and simply do not want to get involved, or if instead they disagree with Leiser’s proffer and would offer different—perhaps contradictory—versions of what they saw and heard. Or perhaps they will testify that they don’t remember anything about these matters. Leiser should be prepared for these possibilities. If this happens with a witness, then the court will give Leiser a fair opportunity to attempt to develop that witness’s testimony within the limits of what’s also fair to the witness and to the defendants, and within the constraints of any applicable rules of evidence.

### **Incarcerated Witnesses with No Direct Knowledge of the Matters To Be Tried**

Leiser has filed motions for writs of habeas corpus ad testificandum for the following inmates, who he claims have information about Leiser and his condition or about medical treatment provided in prison generally, including: Robert Price (#461021), Robert Osowski (#72067) and Loren Leiser (#353252). Leiser does not allege that these witness have personal

knowledge of information that is directly relevant to his specific claims against the defendants. Leiser's motions for writs of habeas corpus ad testificandum for these inmates will be denied.

#### **Unincarcerated Witnesses: The Defendants**

Leiser requests subpoenas for each of the defendants. Leiser does not indicate that he has complied with the trial preparation order, which instructed him to first ask defendants' counsel "whether the defendants will agree to be called as witnesses by plaintiff without a subpoena." Dkt. # 82, at p. 5. That order explains further that, "[i]f defendants do not agree [to testify without a subpoena], then plaintiff will have to follow the procedures for calling unincarcerated witnesses if he wishes to obtain testimony from them." *Id.* Because Leiser does not demonstrate that he has followed the procedures outlined in the trial preparation order, his motion to subpoena the defendants will be denied. The court is willing to revisit this issue if Leiser promptly files a request for reconsideration in which he establishes that he has met the requirements for subpoenaing these witnesses. As always, the court expects that the Attorney General's Office will respond fairly to any reasonable request Leiser makes in this regard.

#### **Other Unincarcerated Witnesses:**

In addition, Leiser requests subpoenas for the following correctional officers assigned to the Waupun Correctional Institution: Sergeant Bleich; Officer LaShock; Sergeant Tritt; Sergeant Lind; Records Custodian Julie Hooper; and Officer Stermert. Leiser does not indicate whether these witnesses will testify voluntarily. If so, a subpoena is not necessary. Dkt. # 82, at 14. Assuming that the above-named correctional officers do not agree to testify voluntarily, Leiser has not complied with procedures outlined in the trial preparation order, which requires that he be prepared to tender to the United States Marshal "a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage, as

well as costs for room and meals if the witness's appearance at trial will require an overnight stay." *Id.* at 15. As of January 2010, the daily witness fee is \$40, the mileage allowance is \$0.51 per mile, and the per diem for room and meals is \$144.00. *Id.* at 16.

The witness fees, costs and travel expenses are established by statute. *See* 28 U.S.C. § 1821. Although Leiser has been granted leave to proceed *in forma pauperis*, the court cannot waive witness fees and other expenses, even for indigent inmates. *See McNeil v. Lowney*, 831 F.2d 1368, 1373 (7th Cir. 1987). Because Leiser has not provided the necessary information, his requests for the issuance of subpoenas for these non-incarcerated witnesses will be denied at this time. The court is willing to revisit this issue if Leiser promptly files a request for reconsideration in which he establishes that he has met the requirements for subpoenaing these witnesses.

#### ORDER

It is ORDERED that:

- (1) Plaintiff Jeffrey D. Leiser's motions for a writ of habeas corpus ad testificandum for Lonnie Jackson (#133045), Michael White (#422734), Robert J. Labotte Jr. (#345853) and Antonio Maddox (#242005) are GRANTED
- (2) Plaintiff Jeffrey D. Leiser's requests for issuance of subpoenas for Michael White (#422734), Robert J. Labotte Jr. (#345853) and Antonio Maddox (#242005) and to have the United States Marshal serve those subpoenas are GRANTED.
- (3) Plaintiff Jeffrey D. Leiser's motions for a writ of habeas corpus ad testificandum for Robert Price (#461021), Robert Osowski (#72067) and Loren Leiser (#353252) are DENIED.

- (4) Plaintiff Jeffrey D. Leiser's requests for issuance of subpoenas for the defendants and for unincarcerated witnesses are DENIED at this time.
- (5) The parties' motions in limine will be taken up separately at the final pretrial conference before the start of trial.

Entered this 23<sup>rd</sup> day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge