

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

EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGHTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

ORDER

03-C-129-C

An evidentiary hearing is scheduled to be held in this case on July 17, 2003, on plaintiff's motion for preliminary injunction. Now plaintiff has filed a document listing the witnesses he wishes to be present at his hearing. In addition, plaintiff has filed a document titled "Motion for Temporary Restraining Order," which I construe as a second motion for a preliminary injunction. In the second motion, plaintiff seeks the same emergency injunctive relief he requested in his original motion for preliminary injunction. Because the matter of plaintiff's entitlement to emergency injunctive relief is scheduled for review on July 17, I will deny plaintiff's second motion for a preliminary injunction as duplicative.

In connection with the evidentiary hearing, plaintiff asks that the court issue writs of habeas corpus ad testificandum for two incarcerated individuals, Craig Sussek, #314681, and Stephen Jones, #197264. He avers that both “will not need to be subpoenaed.” From plaintiff’s description of the testimony each of these inmates intend to give, I conclude that their presence at the hearing is appropriate. However, before I request the clerk of court to issue writs of habeas corpus ad testificandum for these inmates, plaintiff will have to advise the court where these inmates are incarcerated. (I presume plaintiff knows where they are, because he was required to obtain their agreement to testify voluntarily before representing to the court under oath that they did not require subpoenas.)

Also, plaintiff requests subpoenas for four unincarcerated witnesses. Blank subpoena forms are enclosed to plaintiff with this order. However, plaintiff should bear in mind that before I will ask the United States Marshal to serve these completed subpoena forms, plaintiff will have to submit a check or money order made payable to each witness for the full amount of the witness’s travel expenses, plus the daily witness fee of \$40.

ORDER

IT IS ORDERED that

1. Plaintiff’s second motion for a preliminary injunction is DENIED as duplicative.
2. Plaintiff’s request for the issuance of writs of habeas corpus ad testificandum for

inmates Craig Sussek and Stephen Jones is GRANTED. Plaintiff may have until July 7, 2003, in which to advise the court where inmates Sussex and Jones are incarcerated so that writs of habeas corpus ad testificandum may be issued for their appearance at the July 17 evidentiary hearing.

3. Plaintiff may have until July 7, 2003, in which to complete and return the enclosed subpoena forms for the unincarcerated witnesses he wishes to subpoena. The subpoenas should be accompanied by a check or money order made payable to each witnesses in an amount sufficient to cover the witness's travel expenses and the daily witness fee of \$40.

Entered this 26th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge