

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

DOUGLAS K. UHDE,
Plaintiff,

MEMORANDUM

03-C-323-C

v.

MARK K. BITSKY, Deputy Sheriff;
GARY A. SILKA, Deputy Sheriff and Detective;
TAMMY L. KROETZ, Deputy Sheriff;
MATTHEW SHERD, Police Officer,

Defendants.

Douglas Uhde has submitted purported affidavits signed by inmates Randy Ahlgren, Stephen Corbin, James Peterson, David Ramos, Curtis Hahn and Eduardo Perez. These documents are not sworn to and signed by a notary. Instead, each inmate cites to 28 U.S.C. § 1746, a statute that allows the substitution of unsworn declarations. However, the statute mandates that the unsworn substitute affidavit must explicitly state that it is being submitted *under penalty of perjury*. See 28 U.S.C. § 1746 (2000) (Emphasis added). None of the purported affidavits plaintiff has filed indicates that the statements are declared to be true under penalty of perjury. Therefore, the documents are not admissible. This is of no great moment for two reasons. First, the statements have not been submitted in connection

with any pending motion. Therefore, the court has no occasion to consider them. Second, the statements appear to be intended to prove that plaintiff's legal papers were confiscated from his cell on March 9, 2004. There is no need for plaintiff to prove this point. The court is already aware from earlier filings in the case that plaintiff's cell was searched and that his legal papers were temporarily confiscated. Plaintiff will be appearing before this court on April 29, 2004 to defend against defendants' motion for the imposition of Rule 11 sanctions against plaintiff for his filing of fraudulent documents with the court, a matter that prompted the search for and confiscation of plaintiff's papers. Plaintiff should concentrate his energies on preparing for that hearing rather than attempting to prove a matter that is already a matter of record.

With respect to the Rule 11 hearing, defendants have submitted a letter requesting guidance from the court. In particular, defendants state their intention to arrange for the testimony of the persons who provided sworn statements in support of the Rule 11 motion. However, defendants note that it may be both difficult and costly to arrange for inmate Edward Blau to attend the hearing, even though his testimony is important to assist the court in resolving the matter raised in the motion. This court recognizes that Blau will be testifying against plaintiff and that there are security risks in transporting him to the court with plaintiff or housing him in the court's holding cells where he may have contact with plaintiff. Defendants ask whether inmate Blau may give his testimony by telephone.

Because Mr. Blau's testimony may well be in direct conflict with plaintiff Uhde's testimony, it is important that the court have an opportunity to judge Mr. Blau's demeanor as well as his words in determining his credibility. This court has video-teleconferencing capability. If the Stanley Correctional Institution also has such capability, Mr. Blau may give his testimony using this technology. However, if the Stanley Correctional Institution does not have video teleconferencing capability, then defendants will have to produce Mr. Blau in person if they wish him to testify. For defendants' information, this court is equipped with holding cells on different floors. Therefore, if Mr. Blau appears in person to testify, arrangements will be made to keep him separate from plaintiff Uhde both before and after the hearing.

ORDER

IT IS ORDERED that the purported affidavits of inmates Randy Ahlgren, Stephen Corbin, James Peterson, David Ramos, Curtis Hahn and Eduardo Perez are STRICKEN from the court's record.

Further, defendants' request for clarification is GRANTED. Mr. Blau's testimony may be given by video teleconference technology. Otherwise, if defendants intend to introduce the testimony of Mr. Blau, they will have to move quickly to request a writ of habeas corpus ad testificandum so that Mr. Blau may appear in person for the hearing

scheduled in this case on April 29, 2004, at 11:00 a.m.

Entered this 12th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge