

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

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TIMOTHY SCOTT ACKERMANN,

Plaintiff,

v.

JOHN POWERS,

Defendant.

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ORDER

04-C-845-C

Plaintiff Timothy Ackermann has filed a document dated January 20, 2006, in which he lists several persons he says he wants subpoenaed for trial. I construe plaintiff's submission to include a request that the clerk of court issue subpoena forms to him pursuant to Fed. R. Civ. P. 45(a)(3). However, I will direct the clerk to refrain from issuing the requested subpoenas at this time.

Plaintiff's case is not set for trial until August 7, 2006, and plaintiff does not suggest that he needs the subpoenas because he has scheduled depositions of any of the individuals he lists. The dispositive motions deadline is March 17, 2006. Because it is possible that this case will be resolved on a motion for summary judgment, it would be premature for the clerk to issue subpoena forms at this time. If plaintiff's case survives dispositive motions or if

plaintiff schedules a potential witness's deposition, he may renew his request for subpoena forms at that time. If he renews his request, plaintiff should refer to the procedures for calling witnesses to trial that are attached to the preliminary pretrial conference order entered by the United States Magistrate Judge on May 6, 2005. In particular, he should note that even though he is proceeding in forma pauperis, he will have to supply any individual he subpoenas with the fees for one day's attendance at court and the mileage allowed by law. 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 independently include a waiver of witness fees so that an indigent plaintiff can present his case fully to the court. Any potential witness receiving a subpoena from plaintiff unaccompanied by 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 the court's concern today.

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 at this time.

Entered this 30th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge