

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

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FREDERICK ROGERS,

Plaintiff,

v.

C.O. HERWIG,

Defendant.  
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ORDER

04-C-977-C

On March 3, 2006, three days before plaintiff Frederick Rogers's trial was scheduled to begin, plaintiff mailed the following documents to the court: (1) Plaintiff's Sixth Request for Appointment of Counsel; (2) Plaintiff's Second Witness List and Exhibit List; (3) Plaintiff's Exhibit List. On March 6, 2006, for reasons unrelated to plaintiff's March 3 submissions, the court postponed plaintiff's trial to March 13, 2006.

A. Appointment of Counsel

For the reasons expressed in this court's orders of February 25, 2005 and May 18, 2005, denying plaintiff's second and third motions for appointment of counsel, plaintiff's sixth motion for appointment of counsel is denied.

## B. Witnesses

Plaintiff's "Second Witness List" includes nine individuals. The first four individuals on plaintiff's list (Frankin, Ramos, Williams and Johnson) are incarcerated. Plaintiff appears to be suggesting that the four inmates are willing to testify voluntarily. He wrote "involuntary" next to the names of the remaining five witnesses, but made no such marking next to the inmates' names.

The court will not issue an order for Frankin, Ramos, Williams and Johnson to be brought to court because plaintiff has not followed the court's procedures for calling incarcerated witnesses to trial. The court has provided plaintiff with these procedures (entitled "Procedures for Calling Witnesses to Trial") on more than one occasion, most recently with the February 2, 2006 pre-trial order. As explained in detail in the procedures, a plaintiff who wants to obtain the attendance of an incarcerated witness who agrees to testify voluntarily must file a motion, not later than four weeks before trial, stating the name and address of each such witness and including affidavits showing that each witness is willing to testify and has actual knowledge of relevant facts. On December 14, 2005, plaintiff submitted "Plaintiff's Disclosure of Trial Witnesses" (dkt. #35), which listed Frankin, Ramos, Williams and Johnson and stated that each of them "is an eye-witness and heard the whole incidence on April 27." However, plaintiff has not filed the requisite documentation

showing that each incarcerated witness is willing to testify voluntarily.

The remaining witnesses on plaintiff's "Second Witness List" are Doctor Witte, C.O. Roberts, Sgt. Evans, Capt. Quebbeman and defendant Herwig. These five witnesses are not incarcerated and are not willing to appear in court voluntarily. Plaintiff will be provided with subpoena forms for these five witnesses.

### ORDER

IT IS ORDERED that

1. Plaintiff's motion for appointment of counsel is DENIED;
2. Plaintiff's request for witnesses Frankin, Ramos, Williams and Johnson to be brought to court at trial is DENIED;
3. The clerk of court is directed to send plaintiff subpoena forms for witnesses Witte, Roberts, Evans, Quebbeman and Herwig.

Entered this 8th day of March, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge