

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

KURT W. MEYER,

Plaintiff,

v.

MARK TESLIK,

Defendant.

ORDER

05-C-269-C

Jury selection is scheduled to take place in this case on Monday, April 10, 2005. However, because of congestion on the court's calendar, the United States Magistrate Judge will preside over jury selection on April 10 and the final pretrial conference and trial will begin at 8:30 a.m. on Wednesday, April 12, 2006.

Plaintiff has submitted a document titled "Affidavit to obtain an incarcerated witness." In this document, plaintiff asks the court to issue eight subpoena forms and a writ of habeas corpus ad testificandum for Thomas Murata, who is presently confined at the Fox Lake Correctional Institution. According to plaintiff, inmate Murata has agreed to testify voluntarily that he heard plaintiff's conversation with defendant Mark Teslik on August 12, 2004, when defendant allegedly told plaintiff that if plaintiff continued to threaten

defendant with a lawsuit, “it [would] be a long time before [plaintiff] ever attend[ed] any kind of group service for Native Americans.” Because inmate Murata appears to be competent to testify as a witness to what defendant said and the statement would be admissible, I will grant plaintiff’s request for a writ of habeas corpus ad testificandum for inmate Murata.

As to plaintiff’s request for subpoenas, pursuant to Fed. R. Civ. P. 45(a)(3), the clerk of court shall issue signed but blank subpoenas to a party requesting it, who is responsible for completing the subpoenas before service. Pursuant to Rule 45(b)(1), service of such a subpoena shall be made by delivering a copy thereto to such person and, if the person is to be a witness, by giving that person the fees for one day’s attendance and the mileage allowed by law. This requirement applies to plaintiff even though he is indigent. McNeil v. Lowney, 831 F.2d 1368, 1373 (7th Cir. 1987), 28 U.S.C. § 1915(d) (“witnesses shall attend as in other cases . . .”). Although the Constitution guarantees every person the right of access to the courts, it does not require the government to pay witness fees or allow the courts to waive the fees for witnesses so that an indigent plaintiff may present his case fully to the court. McNeil, 831 F.3d at 1373.

Plaintiff should be aware that any potential witness who receives a subpoena from him that does not come with the witness fee and transportation costs may move to quash the subpoena for that failure. The court would be bound to grant such a motion. Having

noted these things, I am directing the clerk of court to send the requested subpoena forms to plaintiff Meyer for use according to the dictates of the statutes and rules.

Finally, plaintiff is reminded that on or before March 13, 2006, he must disclose to defendant and file with the court the names, addresses and telephone numbers of all of the witnesses he intends to call at trial.

ORDER

IT IS ORDERED that jury selection in this case will take place on Monday, April 10, 2006, as previously scheduled. However, the final pretrial conference is moved to Wednesday, April 12, 2006 at 8:30 a.m., and the trial to 9:00 a.m. on April 12, 2006.

Further, IT IS ORDERED that the clerk of court issue a writ of habeas corpus ad testificandum for the attendance of Thomas Murata at trial.

Finally, IT IS ORDERED that the clerk of court issue eight subpoena forms to

plaintiff for his use in connection with the trial scheduled in this action for April 12, 2006.

Entered this 24th day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge