

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

-----  
TITUS HENDERSON,

Plaintiff,

v.

MATTHEW FRANK; PETER HUIBREGTSE; BRIAN  
KOOL; TRACEY GERBER; J. STARKY; RUSSELL  
BAUSCH; ROBERT SHANNON; TODD OVERBO;  
DICK VERHAGEN; and RICHARD SCHNEITER,

Defendants.  
-----

ORDER

06-C-12-C

In this lawsuit, plaintiff is proceeding on several claims, including claims that defendants Bausch and Shannon violated his Eighth Amendment rights by fondling him on July 16, 2003, defendant Bausch violated his Eighth Amendment rights by grabbing his buttocks on December 17, 2003, and defendant Peter Huibregtse violated his Eighth Amendment rights by failing to prevent defendant Bausch from grabbing his buttocks on December 17, 2003. Now plaintiff has asked the clerk to issue a subpoena form so that he can mandate the production of court records from a John Doe proceeding held before the Hon. George Curry in the Grant County Circuit Court, presumably relating to the Grant

County Sheriff's Department's investigation into plaintiff's charges of sexual abuse against him. Plaintiff notes that he made an open records request for the documents utilizing Wisconsin's open records law, Wis. Stat. § 19.21-19.39, but that this request was "rejected."

In Wisconsin, John Doe proceedings may be secret. Wis. Stat. § 968.26. If the proceeding was secret, § 968.26 mandates that the record of the proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used. Plaintiff does not explain why his open records request was "rejected," but it is highly probable that the proceeding was subject to a secrecy order. See In re John Doe Proceeding, 260 Wis. 2d 653, N.W. 2d 260 (2003) ("The John Doe statute, which authorizes secrecy in John Doe proceedings, is a clear statement of legislative policy and constitutes a specific exception to the public records law.") If it was secret, then plaintiff cannot obtain the documents, even with a subpoena. If the proceeding was not secret, then plaintiff does not need a subpoena, because records of court proceedings are public records available for public inspection. Because issuance of a subpoena to compel the production of documents that may not be revealed to plaintiff pursuant to state law would have to result in an immediate motion to quash and because such a motion would have to be granted, it would be a waste of judicial resources to issue a subpoena for the purpose plaintiff seeks it. Therefore, I will direct the clerk of court to refrain from issuing the

requested subpoena.

ORDER

Plaintiff's request for issuance of a subpoena form for the purpose of attempting to subpoena documents from a state court John Doe proceeding is DENIED. The clerk of court is directed to refrain from issuing the requested subpoena.

Entered this 9th day of February, 2007.

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