

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

RUSSEL L. SINGLETARY,

Plaintiff,

v.

ORDER

06-C-323-C

JAMES W. REED, M.D.
CHIEF MEDICAL DIRECTOR
FCI OXFORD
OXFORD, WISCONSIN,

Defendant.

This case is scheduled for trial beginning on July 23, 2007. In an order dated June 1, 2007, I reminded plaintiff that if he wished to call witnesses to testify on his behalf at trial, he was to refer to this court's procedures for calling witnesses to trial, a copy of which was sent to him with the magistrate judge's preliminary pretrial conference order dated October 5, 2006, and another copy of which was attached to the June 1 order. In addition, I told plaintiff expressly that if he wished to call defendant Reed as a witness at trial, he would have to ask defendant's counsel promptly whether defendant would agree to testify voluntarily and, if not, plaintiff would have to follow the procedures for subpoenaing

unincarcerated witnesses to insure his presence at trial. Pursuant to those procedures, plaintiff had until four weeks before trial, or until June 25, 2007, in which to serve and file a request for subpoena forms for any unincarcerated witnesses he intended to call to testify on his behalf.

Now, two weeks after the June 25, 2007 deadline and only two weeks before trial, plaintiff has submitted an application for subpoenas duces tecum for defendant Reed and for doctors in Herlong, California, Oshkosh and Columbus, Wisconsin and Glendive, Montana. He does not support his request for the issuance of subpoenas with an affidavit as he is required to do under the court's witness procedures, in which he avers that 1) he has contacted each witness to request his voluntary testimony and that the witness has refused to grant the request; 2) he has attempted to locate a person over the age of 18 to serve the subpoenas for him and has failed in that regard; 3) he requires the assistance of the United States Marshal to serve the subpoenas for him; and 4) he is prepared to tender to the marshal a check or money order made payable to each witness in the amount necessary to cover the daily witness fee (\$40), the witness's mileage (at \$.48.5 per mile) and the daily subsistence fee for those witnesses required to stay in Madison overnight (\$138 for each witness for each night). Indeed, in a letter dated July 5, 2007, that arrived under separate cover, plaintiff asks that the witness fees be waived because he does not have any money to pay these costs.

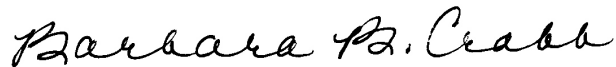
Plaintiff's request that the witness fees be waived must be denied. District courts do not have statutory authority to advance or waive witness fees for indigent litigants. McNeil v. Lowney, 831 F.2d 1368, 1373 (7th Cir. 1987); 28 U.S.C. § 1915(d) (witnesses shall attend as in other cases . . ."); see also Marozsan v. United States, 90 F.3d 1284, 1290-91 (7th Cir. 1996). In any event, plaintiff's request for subpoena forms is so untimely that it is certain he would be unable to return the completed forms with the necessary witness payments to the marshal in time for the marshal to serve the subpoenas. In light of plaintiff's admission that he does not have the money to pay the witnesses he wishes to subpoena, I will direct the clerk of court to refrain from issuing the requested subpoena forms.

ORDER

IT IS ORDERED that plaintiff's request that he be allowed to subpoena witnesses in this case without tendering to the witness the necessary witness fees is DENIED. The clerk of court is directed to refrain from sending plaintiff the subpoena forms he has requested.

Entered this 10th day of July, 2006.

BY THE COURT:



BARBARA B. CRABB
District Judge