

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

SHAHEED TAALIB'DIN MADYUN,

ORDER

Petitioner,

08-cv-32-bbc

v.

KIRBY LINJER,

Respondent.

On October 17, 2008, this court held a recorded telephonic hearing to discuss plaintiff's motion to postpone the trial and defendant's motion to allow a third-party witness to testify via videoconferencing at trial. Plaintiff participated on his own behalf; defendant was represented by Assistant Attorney General Jody Schmelzer.

After obtaining more detail from both sides on plaintiff's medical condition, I declined to postpone the trial. The state will follow-up with the most recent medical reports to verify its position on plaintiff's medical needs. Both sides should be prepared to update the court on October 22, 2008. Both sides, however, also should be prepared to go to trial as calendared.

I tentatively granted the motion to allow Dr. Finger to testify from his hospital via videoconferencing. The order is conditional because the doctor or someone else from the hospital should verify directly to the court their secondhand reports regarding Dr. Finger's unavailability due to work constraints. Upon receipt of such a letter or other written

communication from someone with firsthand knowledge, the motion will be granted. Dr. Finger's proffered testimony regarding post-incident care and treatment of plaintiff is brief. Dr. Finger is on duty as an emergency room doctor at Mercy Medical Center in Oshkosh, Wisconsin, over 90 miles from the federal courthouse in Madison. Given Dr. Finger's brief testimony, his distance from court, and the importance of his work responsibilities, there are compelling circumstances and good cause for allowing him to testify via videoconferencing, assuming that appropriate measures can be implemented to allow for a proper direct examination and cross-examination.

Plaintiff also complained that his institution is not providing him with requested photocopies, even though he has money available to pay. The state will be looking into this today. Plaintiff had several additional questions about previous rulings on evidentiary and trial issues; although plaintiff is free to re-phrase these issues at the final hearing with the trial judge, it is unlikely that any of the previously-entered rulings will change.

Entered this 17th day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge