

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

WAR N. MARION,

Plaintiff,

v.

JANEL NICKEL, DYLAN RADTKE,
CHAD KELLER and BENJAMIN NEUMAIER,

Defendants.

ORDER

09-cv-723-bbc

In this prisoner civil rights case, plaintiff War Marion alleges that defendants Chad Keller and Benjamin Neumaier disciplined him because of a previous lawsuit that he filed, in violation of his right of access to the courts. Trial is scheduled for March 21, 2011. Two motions related to witness requests are now before the court.

First, plaintiff has filed a document that I construe as a petition for a writ of habeas corpus ad testificandum in which he asks for the attendance of prisoner Tony Merriweather at trial. Because plaintiff represents that Merriweather was an eyewitness to the incident that led to the conduct report at issue in this case and that Merriweather has volunteered to testify for plaintiff, I will grant the petition.

Second, plaintiff has filed a document in which he requests subpoenas for three unincarcerated witnesses who are correctional officers at the Columbia Correctional Institution. He asks the court to order prison officials to allow him to pay the witness fees using money from his release account.

The use of release account funds is governed by state law. Wis. Admin. Code § DOC 309.466. According to § 309.466(2), “[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation.” Although it is true that, in rare instances, the supremacy clause of the United States Constitution requires state law to give way to a competing federal law, there is no federal law that would require state officials to give prisoners money from their release account so that they can pay the costs of subpoenaing witnesses to trial. Therefore, this court has no authority to direct prison officials to allow plaintiff access to his release account funds at this time. Further, because the fees are for the witness rather than the court, the court has no authority to waive the fees. McNeil v. Lowney, 831 F.2d 1368, 1373 (7th Cir. 1987).

Plaintiff says that he would ask the officers whether they will testify for him voluntarily but Janel Nickel, the security director of the prison, has refused to forward his requests to the officers and he has no other way to contact them. Although it may be unlikely that the officers will volunteer to testify for plaintiff, he should have the opportunity

to ask them. Accordingly, I am requesting counsel for defendants to forward plaintiff's request to the three officers, Debra Wilson, Daniel Bavinick and Roy Davenport. If any of those witnesses wish to testify for plaintiff, he or she may contact plaintiff directly.

ORDER

IT IS ORDERED that

1. Plaintiff War Marion's petition for a writ of habeas corpus ad testificandum, dkt. #85, is GRANTED. The Clerk of Court is directed to issue a writ of habeas corpus ad testificandum for the attendance of Tony Merriweather at trial beginning on March 11, 2011. Plaintiff represents that Merriweather is incarcerated at the Columbia Correctional Institution in Portage, Wisconsin.

2. Plaintiff's request for subpoenas for unincarcerated witnesses Debra Wilson, Daniel Bavinick and Roy Davenport, dkt. #87, is DENIED for his inability to pay the witness fees.

Entered this 18th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge