

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

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CHRISTOPHER M. SANDERS,

Plaintiff,

v.

MS. LUNDMARK,

Defendant.

ORDER

11-cv-206-slc

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Plaintiff Christopher Sanders has received this court's November 2, 2011 order regarding his request for witnesses (dkt. 55) and has responded with a "Request for Reconsideration/Clarification/Assistance," dkt. 56. As a starting point, Sanders asks this court to postpone the November 10, 2011 hearing because he needs more time to develop evidence on his contention that Captain Chada intentionally misled him about his right to appeal. That request I will grant: the November 10, 2011 hearing date is postponed four weeks, to December 8, 2011 at 10:00 a.m.

Sanders' renewed request for appointment of counsel is denied without prejudice. Sanders is capable of gathering evidence in support of his claim, if it exists, without the assistance of an attorney. The issue to be decided at the hearing is very narrow. The two critical witnesses are Sanders and Captain Chada. Apparently no one else heard what Captain Chada told Sanders, so the other witnesses are of secondary importance at best, if they have any relevant testimony to offer at all. Sanders now has four extra weeks to contact these witnesses to determine if they actually can provide testimony relevant to the question of what Captain Chada told Sanders about appealing, to determine if they will appear voluntarily, and if not, to persuade the court that they have testimony relevant to the fact dispute regarding exhaustion.

Toward that end, plaintiff can expect some cooperation from the state, but not nearly the amount to which he thinks he is entitled. As a starting point, tossing out perjury accusations like candy from a parade float is not going to incline the assistant attorney general to go out of her way to help Sanders identify the witnesses who he thinks have testimony relevant to the exhaustion dispute. In any case, it is unrealistic for Sanders to telephone an assistant attorney general and expect a timely call back to hash out discovery disputes. The quickest, most effective way to obtain this information is in writing. Sanders should send the assistant attorney general a letter providing every specific piece of information he possesses about the two inmates who allegedly helped him research the appeal question will trigger her obligation promptly to investigate in good faith to see if she can identify them. (This is not an obligation to search exhaustively until the witnesses are found, no matter what. Sanders needs to provide enough front-end information to make this a manageable exercise for the institution).

As for the correctional officers and staff who Sanders alleges are secretly in his corner, it is up Sanders to get them to commit to testifying in his favor on point(s) relevant to the court's determination whether Sanders or Captain Chada more accurately recalls their conversation about the need for Sanders to appeal. He now has four more weeks to accomplish all this.

#### ORDER

It is ORDERED that plaintiff's Request for Reconsideration is GRANTED IN PART and DENIED IN PART:

- (1) The evidentiary hearing is moved to December 8, 2011 at 10:00 a.m.
- (2) Plaintiff's request to appoint an attorney is denied without prejudice.

(3) Plaintiff may seek from the state information identifying hearing witnesses by making specific, detailed written requests, and the state must investigate and respond promptly and in good faith.

(4) It is plaintiff's obligation to ensure the presence of his witnesses on December 8, 2011, either by timely seeking and obtaining court subpoenas and writs, or by obtaining the voluntary appearance of witnesses.

Entered this 7<sup>th</sup> day of November, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge