

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

JENNIFER PETKUS,

Plaintiff,

v.

ORDER

12-cv-104-wmc

RICHLAND COUNTY and WISCONSIN COUNTY
MUTUAL INSURANCE CORP./
AEGIS CORPORATION,

Defendants.

This case is scheduled for jury selection and trial on April 22, 2013. Plaintiff Jennifer Petkus, who is representing herself, has filed a motion for issuance of subpoenas for five witnesses; Marcia Machotka, Pam Fargen, Tom Hougan, Andrew Sharp and Pam McCloud Smith. Plaintiff's motion will be granted.

Pursuant to Rule 45(a)(3), the clerk of court shall issue signed but blank subpoenas to a party requesting it, who is responsible for completing the subpoenas before service. Pursuant to Rule 45(b)(1), service of a subpoena shall be made by delivering a copy of the subpoena to the person to be subpoenaed and tendering to that person the fees for one day's attendance and the mileage allowed by law.

As stated in the instructions attached to the March 11, 2013 trial preparation order, before the court will grant a request for a subpoena form for an unincarcerated witness, the party must satisfy the court by affidavit declared to be true under penalty of perjury that

- 1) The witness refuses to testify voluntarily;
- 2) The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or
- 3) The party is proceeding *in forma pauperis*, has been unable to arrange for service of the

subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court; and

4) The party is prepared to tender to the marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage, as well as costs for room and meals if the witness's appearance at trial will require an overnight stay.

Plaintiff is not proceeding *in forma pauperis* and has provided the requested affidavit. In her motion, plaintiff asks for clarification as to the amount of each check needed at the time of service. While I cannot calculate this for plaintiff, when providing the check to the person who will be serving the subpoenas, as noted above, plaintiff must provide a daily witness fee for one day attendance and for the mileage allowed by law. To calculate mileage, plaintiff would need to find out how many miles a witness would need to travel round trip to 120 N. Henry Street, Madison, Wisconsin.

A check or money order made payable to the person to whom the subpoena is addressed must accompany the subpoena. Current rates for witness fees and mileage costs are set out below. Any potential witness receiving a subpoena from plaintiff unaccompanied by the witness fee and mileage costs may move to quash the subpoena for that failure and the court would be bound to grant such a motion. Current rates for daily witness fees, subsistence and mileage are as follows:

CURRENT SUBPOENA RATES (as of January 2013)

Daily Witness Fee - \$40

Mileage - \$0.565

Room and Meals (Per Diem) - \$145

Plaintiff is reminded that she is responsible for arranging for service of her subpoenas. Service may be made by any person at least 18 years old who is not a party to the lawsuit. Plaintiff is not to submit completed subpoena forms and checks or money orders for witness fees and mileage to this court. The forms and checks are to be sent directly to the individual who will serve the subpoenas.

ORDER

IT IS ORDERED that plaintiff Jennifer Petkus's motion for issuance of subpoenas, dkt. 58, is GRANTED. The clerk of court is directed to send five subpoena forms to plaintiff.

Entered this 2nd day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge