

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ANDERT ALLEN LINDSEY,)
)
 Plaintiff,)
)
 v.)
)
 DERRICK CUNNINGHAM, SHERIFF,)
 MONTGOMERY COUNTY, *et al.*,)
)
 Defendants.)

CIVIL ACTION NO. 2:13-CV-485-WHA
[WO]

ORDER

For good cause, it is

ORDERED as follows:

1. An evidentiary hearing concerning exhaustion of administrative remedies is hereby set for **December 8, 2016, at 2:00 p.m.** in Courtroom 5B in the United States Courthouse Complex, One Church Street, Montgomery, Alabama.

Specifically, the issue before the court at this stage is whether plaintiff exhausted his administrative remedies as required pursuant to 42 U.S.C. §1997e(a) of the Prison Litigation Reform Act (“PLRA”). Under 42 U.S.C. §1997e(a), “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” At this proceeding, the court will hear ONLY evidence concerning whether Plaintiff properly exhausted administrative remedies regarding the issues presented in the complaint prior to filing suit in federal court

– *i.e.*, whether defendant submitted grievance forms regarding the issues of which he complains during the relevant time period. The parties shall be prepared to present evidence – including, but not limited to, evidence in the form of testimony from witnesses – to support their respective positions as to this question.

Information regarding witnesses, and the process for issuing subpoenas to witnesses, is contained in section 2, below.

2. WITNESSES.

(a) All parties shall file a witness list at least 20 days before the evidentiary hearing. Witnesses not on the list will not be heard.

(b) Cases Proceeding *In Forma Pauperis*. If the plaintiff desires to procure attendance of witnesses by writ or subpoena, he shall file and serve – not later than 20 days before the evidentiary hearing – a witness list containing the names, AIS numbers where applicable, and addresses of all witnesses – whether a subpoena is sought or not – (inmate or civilian status). He shall also provide a brief statement of the expected testimony of each witness, whether a subpoena is sought or not. M.D. ALA. LR 45.1(b). The plaintiff should be specific in stating the witnesses’ expected testimony; if that testimony is not material or is simply cumulative, the court may in its discretion decline to order the subpoena or appearance of the witness. *See Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975).

(c) Subpoena by Non-Paupers. Subpoenas may be served in accordance with FED.R.CIV.P. 45(b). If service by the United States Marshal is requested, the subpoena must be filed not less than 14 calendar days prior to the date of the evidentiary hearing and must contain the complete name and address of the witness. M.D. ALA. LR(a)(1).

(d) Witnesses who are not incarcerated. It is the responsibility of the party who has secured an un-incarcerated witness' voluntary attendance to notify the witness of the time and date of the evidentiary hearing. No action need be sought or obtained from the Court.

For un-incarcerated witnesses whose attendance is not voluntary, Rule 45(c) requires that a subpoena must be accompanied by an attendance fee (\$40.00 per day), a lodging fee (\$83.00 per day) and meal allowance (\$46.00) if overnight stay is required, and actual expenses of a common carrier or mileage (54¢ per mile each way), or it need not be obeyed. The witness will be so informed by the subpoena. It is the responsibility of the party requesting the subpoena to provide a money order made payable to the witness to the clerk's office for tender with the subpoena. Because no statute authorizes the use of public funds for these expenses in civil cases, the tendering of witness fees and travel expenses is required even if the party was granted leave to proceed *in forma pauperis*. The subpoena will not be served on the un-incarcerated witness by the United States Marshal unless the money order is provided to the Court on or before 14 days prior to the hearing.

(e) Incarcerated witnesses. An incarcerated witness cannot be brought to court to attend the evidentiary hearing and give testimony unless the Court orders the warden or other custodian to permit the witness to be transported to court. No such order will be forthcoming for an incarcerated witness unless the plaintiff complies strictly with section (b), above.

DONE, on this the 1st day of November, 2016.

/s/ Susan Russ Walker
Susan Russ Walker
Chief United States Magistrate Judge