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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY MARSHALL,

Plaintiff,

No. CIV S-04-1657 JAM EFB P

vs.

CASTRO, et al.,

Defendants.

ORDER

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Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. According to plaintiff, he intends to call several unincarcerated witnesses at trial. Plaintiff is reminded that the following procedures apply for securing the attendance of unincarcerated witnesses at trial:

I. Obtaining Attendance of an Unincarcerated Witness Who Agrees to Testify Voluntarily

A party need not obtain an order to produce an unincarcerated witness who intends to testify voluntarily. However, the party is responsible for ensuring attendance of such a witness.

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1 II. Obtaining Attendance of Unincarcerated Witnesses Who Refuse to Testify  
2 Voluntarily

3 To obtain the presence of a witness who is at liberty and who refuses to testify  
4 voluntarily, the party who intends to present that witness's testimony must complete a subpoena  
5 and submit it to the United States Marshal for service upon the witness. Blank subpoena forms  
6 may be obtained from the Clerk of the Court. Completed subpoenas must be submitted *not*  
7 *earlier than four weeks and not later than two weeks before trial.* The party must also tender  
8 through the United States Marshal a money order payable to the witness in the amount of the  
9 daily witness fee, \$40.00, *plus the witness's travel expenses.* If plaintiff seeks the witness's  
10 presence and proceeds *in forma pauperis*, then plaintiff must also submit a copy of the order  
11 granting him leave so to proceed.

12 The United States Marshal *will not serve a subpoena upon an unincarcerated witness*  
13 *without the witness fee and travel expenses having been tendered.* No statute authorizes the use  
14 of public funds for expenses in civil cases and so even a plaintiff proceeding *in forma pauperis*  
15 must tender the fees.

16 So ordered.

17 Dated: October 22, 2009.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE