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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM JAMES,
Plaintiff,
v.
COUNTY OF SACRAMENTO et al.,
Defendants.

No. 2:10-cv-0664 MCE DAD P

ORDER

Plaintiff is a former county jail inmate proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983.

On September 17, 2013, the court ordered the parties in this case to participate in a mandatory settlement conference and directed them to inform the court as to whether they wished to waive any disqualification and proceed before the undersigned magistrate judge or if they wished to be referred to the court’s mediation program. Both parties have consented to the participation of the undersigned magistrate judge. However, defense counsel has now objected to a mandatory settlement conference and informed the court that the parties recently participated in an unsuccessful private mediation. According to defense counsel, the mediation took place before an extremely experienced mediator who was unable to bridge the substantial gap between the parties’ respective settlement positions.

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1 In the interest of judicial economy, the court will not require the parties to participate in a
2 settlement conference. Instead, the court will re-set a schedule for this litigation. By this order,
3 the parties will be directed to file pretrial statements in accordance with the schedule set forth
4 below. In addition to the matters already required to be addressed in the pretrial statement in
5 accordance with Local Rule 281, plaintiff will be required to make a particularized showing in his
6 pretrial statement in order to obtain the attendance of witnesses. Plaintiff is advised that failure to
7 comply with the procedures set forth below may result in the preclusion of any and all witnesses
8 named in his pretrial statement.

9 At the trial of this case, the plaintiff must be prepared to introduce evidence to prove each
10 of the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of
11 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is the plaintiff's responsibility
12 to produce all of the evidence to prove the case, whether that evidence is in the form of exhibits
13 or witness testimony. If the plaintiff wants to call witnesses to testify, plaintiff must follow
14 certain procedures to ensure that the witnesses will be at the trial and available to testify.

15 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
16 Testify Voluntarily

17 An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot
18 come to court unless this court orders the warden or other custodian to permit the witness to be
19 transported to court. This court will not issue such an order unless it is satisfied that:

- 20 1. The prospective witness is willing to attend;
- 21 and
- 22 2. The prospective witness has actual knowledge of relevant facts.

23 With the pretrial statement, a party intending to introduce the testimony of incarcerated
24 witnesses who have agreed voluntarily to attend the trial must serve and file a written motion for
25 a court order requiring that such witnesses be brought to court at the time of trial.

26 The motion must:

- 27 1. State the name and address of each such witness;
- 28 and

2. Be accompanied by affidavits showing that each witness is willing to testify and that each witness has actual knowledge of relevant facts.

The willingness of the prospective witness can be shown in one of two ways:

1. The party can swear by affidavit that the prospective witness has informed the party that he or she is willing to testify voluntarily without being subpoenaed. The party must state in the affidavit when and where the prospective witness informed the party of this willingness;

Or

2. The party can serve and file an affidavit sworn to by the prospective witness, in which the witness states that he or she is willing to testify without being subpoenaed.

The prospective witness' actual knowledge of relevant facts can be shown in one of two ways:

1. The party can swear by affidavit that the prospective witness has actual knowledge. However, this can be done only if the party has actual firsthand knowledge that the prospective witness was an eyewitness or an ear-witness to the relevant facts. For example, if an incident occurred in the plaintiff's cell and, at the time, the plaintiff saw that a cellmate was present and observed the incident, the plaintiff may swear to the cellmate's ability to testify.

Or

2. The party can serve and file an affidavit sworn to by the prospective witness in which the witness describes the relevant facts to which the prospective witness was an eye- or ear-witness. Whether the affidavit is made by the plaintiff or by the prospective witness, it must be specific about what the incident was, when and where it occurred, who was present, and how the prospective witness happened to be in a position to see or to hear what occurred at the time it occurred.

The court will review and rule on the motion for attendance of incarcerated witnesses, specifying which prospective witnesses must be brought to court. Subsequently, the court will issue the order necessary to cause the witness' custodian to bring the witness to court.

1 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
2 Testify Voluntarily

3 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to testify
4 voluntarily, the party should submit with the pretrial statement a motion for the attendance of
5 such witnesses. Such motion should be in the form described above. In addition, the party must
6 indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

7 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
8 Testify Voluntarily

9 It is the responsibility of the party who has secured an unincarcerated witness' voluntary
10 attendance to notify the witness of the time and date of trial. No action need be sought or
11 obtained from the court.

12 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to
13 Testify Voluntarily

14 If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, not
15 earlier than four weeks and not later than two weeks before trial, the party must prepare and
16 submit to the United States Marshal a subpoena for service by the Marshal upon the witness.
17 Also, the party seeking the witness' presence must tender an appropriate sum of money to the
18 witness through the United States Marshal. In the case of an unincarcerated witness, the
19 appropriate sum of money is the daily witness fee of \$40.00 plus the witness' travel expenses.

20 A subpoena will not be served by the United States Marshal upon an unincarcerated
21 witness unless the subpoena is accompanied by a money order made payable to the witness for
22 the full amount of the witness' travel expenses plus the daily witness fee of \$40.00. As noted
23 earlier, because no statute authorizes the use of public funds for these expenses in civil cases, the
24 tendering of witness fees and travel expenses is required even if the party was granted leave to
25 proceed in forma pauperis.

26 Accordingly, IT IS HEREBY ORDERED that:

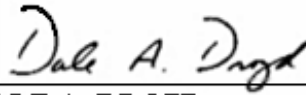
27 1. Within thirty days of the date of service of this order, plaintiff shall file and serve his
28 pretrial statement and any motions necessary to obtain the attendance of witnesses at trial. Within

1 thirty days of service of plaintiff's pretrial statement, the defendants shall file their pretrial
2 statement. The parties are advised that failure to file a pretrial statement may result in the
3 imposition of sanctions, including dismissal of this action.

4 3. Pretrial conference (as described in Local Rule 282) in this case will be before the
5 undersigned magistrate judge. The pretrial conference shall be conducted on the file only,
6 without appearance by either party.

7 4. This matter is set for jury trial before the Honorable Morrison C. England, Jr., on
8 January 26, 2015, at 9:00 a.m. in Courtroom 7.

9 Dated: January 28, 2014

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11 _____
12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE

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