

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WASHINGTON,

Plaintiff,

v.

ANDREW NANGALAMA, et al.,

Defendants.

No. 2:14-cv-0232 JAM CKD P

ORDER

Plaintiff is proceeding pro se with an action for violation of civil rights under 28 U.S.C. § 1983. Discovery is closed and the dispositive motion deadline has passed. Good cause appearing, the parties will be required to file pretrial statements in accordance with the schedule set forth below.

As set forth in this court’s initial scheduling order, in addition to the matters already required to be addressed in the pretrial statement in accordance with Local Rule 281, plaintiff will be required to make a particularized showing in the pretrial statement in order to obtain the attendance of witnesses. Plaintiff is advised that failure to comply with the procedures set forth below may result in the preclusion of any and all witnesses named in the pretrial statement.

At the trial of this case, the plaintiff must be prepared to introduce evidence to prove each of the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of trial evidence: (1) exhibits and (2) the testimony of witnesses. It is the plaintiff’s responsibility

1 to produce all of the evidence to prove the case, whether that evidence is in the form of exhibits
2 or witness testimony. If the plaintiff wants to call witnesses to testify, plaintiff must follow
3 certain procedures to ensure that the witnesses will be at the trial and available to testify.

4 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
5 Testify Voluntarily

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

- 9 1. The prospective witness is willing to attend;
- 10 and
- 11 2. The prospective witness has actual knowledge of relevant facts.

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

15 The motion must:

- 16 1. State the name and address of each such witness;
- 17 and
- 18 2. Be accompanied by affidavits showing that each witness is willing to testify
19 and that each witness has actual knowledge of relevant facts.

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

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

25 Or

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

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

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

9 Or

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

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

19 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
20 Testify Voluntarily

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

25 ////

26 ////

27 ////

28 ////

1 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
2 Testify Voluntarily

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

6 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to
7 Testify Voluntarily

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

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

20 **NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE**

21 Due to the extraordinarily high case load of the district court judges in this district, trials
22 in civil rights actions concerning prison conditions are often conducted by United States
23 Magistrate Judges with the consent of all the parties. A trial conducted by a magistrate judge is
24 far more likely to proceed on a scheduled trial date. Presently, when a civil trial is set before a
25 district judge, any criminal trial which conflicts with the civil trial will take priority, even if the
26 civil trial date was set first. Thus, a civil trial set before a district judge is often trailed day to day
27 or week to week until the completion of the matter occupying the district court. Consenting to the

28 //////

1 jurisdiction of a magistrate judge for all purposes will generally expedite the resolution of an
2 action.

3 The parties are therefore reminded of the availability of a United States Magistrate Judge
4 to conduct all further proceedings in this action including trial pursuant to 28 U.S.C. § 636(c),
5 Federal Rule of Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by
6 a United States Magistrate Judge is taken directly to the United States Court of Appeal for the
7 Ninth Circuit.

8 If all parties in this action consent to Magistrate Judge jurisdiction, the court will set this
9 matter for trial as expeditiously as possible, probably within two months of receipt of defendants'
10 pretrial statement. Consistent with the Federal Rules of Civil Procedure and the Local Rules of
11 the Eastern District, if the matter proceeds to trial under this process, the court will handle the
12 trial just as any other civil case which comes before the court.

13 Withholding consent or declining jurisdiction of a United States Magistrate Judge for all
14 purposes will have no effect on the merits of a party's case or have any adverse substantive
15 consequences. A party may also consent to magistrate judge jurisdiction at any time, even if the
16 party has previously declined such jurisdiction.

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff shall file and serve his pretrial statement and any motions necessary to obtain
19 the attendance of witnesses at trial within 30 days.

20 2. Defendants shall file their pretrial statement within 21 days of service of plaintiff's.

21 3. The parties are advised that failure to file a pretrial statement may result in the
22 imposition of sanctions, including dismissal of this action.

23 4. The Clerk of the Court is directed to send the parties the court's form titled "Consent to
24 Proceed Before a United States Magistrate Judge." If the parties wish to consent to a magistrate

25 ////

26 ////

27 ////

28 ////

1 judge for all matters remaining in this action including trial, they should sign the consent form
2 and return it to the court with their pretrial statement.

3 Dated: February 26, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

4
5
6
7
8 1
9 wash0232.41(1)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28