



1 assistance the court can provide on the basis of plaintiff's in forma pauperis status would be  
2 personal service of the deposition subpoena on Dr. McAlpine. See 28 U.S.C. § 1915(d).

3 If plaintiff locates Dr. McAlpine, and can make arrangements to obtain his deposition,  
4 plaintiff should file a supported motion requesting issuance of a deposition subpoena. See Fed.  
5 R. Civ. P. 30, 45. If approved, the Clerk of Court will send plaintiff a blank subpoena form for  
6 his completion and submission to the court, to obtain personal service of the subpoena by the  
7 United States Marshal. Service of subpoenas must be made by personal service or the subpoena  
8 is null and void. Fed. R. Civ. P. 45(c); Gillam v. A. Shyman, Inc., 22 F.R.D. 475 (D. Alaska  
9 1958). The person to whom the subpoena is directed must be clearly and readily identifiable, with  
10 an accurate physical address to enable personal service of the subpoena. See Fed. R. Civ. P.  
11 45(a)(1)(A)(iii).

12 This court must consider the following matters before approving service of a proposed  
13 subpoena. A subpoena must comply with the relevance standards set forth in Federal Rule of  
14 Civil Procedure 26(b)(1) (“[p]arties may obtain discovery regarding any nonprivileged matter that  
15 is relevant to any party’s claim or defense and proportional to the needs of the case”), and  
16 considerations of burden and expense set forth in Federal Rules of Civil Procedure 26(b)(2)(C)  
17 and 45(d). The “Federal Rules of Civil Procedure were not intended to burden a non-party with a  
18 duty to suffer excessive or unusual expenses in order to comply with a subpoena[.]” Badman v.  
19 Stark, 139 F.R.D. 601, 605 (M.D. Pa. 1991) (requiring indigent plaintiff to demonstrate that he  
20 had “made provision for the costs of such discovery”), citing Cantiline v. Raymark Industries,  
21 Inc., 103 F.R.D. 447, 450 (S.D. Fla. 1984); see also United States v. Columbia Broadcasting  
22 System, Inc., 666 F.2d 364 (9th Cir. 1982) (court may award costs of compliance with subpoena  
23 to non-party). Non-parties are “entitled to have the benefit of this Court’s vigilance” in  
24 considering these factors. Badman, 139 F.R.D. at 605.

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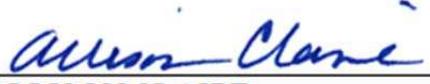
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Alternatively, plaintiff may request that Dr. McAlpine (and any other third party) provide a sworn affidavit or declaration setting forth his personal knowledge of the relevant facts concerning this case. Prior to trial in this action, a declaration made under penalty of perjury will suffice to establish relevant material facts. See Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion [for summary judgment] must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”).

Accordingly, IT IS HEREBY ORDERED that plaintiff’s request, ECF No. 85, is denied without prejudice.

DATED: May 17, 2017

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE