

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DAVID STARKS, SR.,

Plaintiff,

v.

CHERYL COUCH, et al.,

Defendants.

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Civil No. **08-407-GPM-CJP**

ORDER

PROUD, Magistrate Judge:

Before the court is Plaintiff’s Motion for a Mental Health Examination. (**Doc. 85**).

Defendants filed a response at **Doc. 88**.

Plaintiff states that his mental condition is in issue, and he asks the court to order that he undergo a mental health examination pursuant to **Fed.R.Civ.P. 35**. Plaintiff specifies that this examination should be conducted by a an examiner “other than the defendants or one from the Illinois Department of Corrections.”

Plaintiff’s understanding of Rule 35 is faulty. That Rule contemplates an examination of a party at the request of another party, i.e., an examination of a plaintiff at the request of a defendant. Under those circumstances, the defendant retains and pays the examining doctor, who then typically provides expert testimony on behalf of the defendant. The Rule does not provide a mechanism for what plaintiff is trying to achieve here, which is an examination for *plaintiff’s* benefit, at someone else’s expense.

The fact that plaintiff is indigent and has been granted leave to proceed in *forma pauperis* does not entitle him to an expert witness free of cost. *McNeil v. Lowney*, **831 F.2d 1368, 1373**

(7th Cir. 1987). The court cannot compel a doctor to examine plaintiff and/or to serve as his expert witness for free, and cannot require defendants to fund plaintiff's litigation. *Id.*; see also, *Marozsan v. U.S.*, 90 F.3d 1284, 1290-1291 (7th Cir. 1996).

Denying this request does not infringe plaintiff's right of access to the courts because "the right of access to the courts does not independently include a waiver of witness fees so that the indigent litigant can present his case fully to the court." *McNeil v. Lowney*, 831 F.2d at 1373.

Upon consideration and for good cause shown, Plaintiff's Motion for a Mental Health Examination (**Doc. 85**) is **DENIED**.

IT IS SO ORDERED.

DATED: March 16, 2009.

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE