

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  
EASTERN DISTRICT OF CALIFORNIA

AMBER MERRIE BRAY,

CV F 01 6517 REC SMS P

Plaintiff,

v.

ORDER INFORMING PLAINTIFF OF FEE  
AMOUNTS FOR WITNESS ATTENDANCE

S. HOLLEY, R.N.,

ORDER DIRECTING THE CLERK OF COURT  
TO SERVE COURTESY COPY OF  
DOCUMENT 70 ON DEFENDANT

Defendant.

Amber Merrie Bray (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 29, 2005, Plaintiff submitted a letter to the Court titled “To Whom It May Concern” in which she notifies the Court that she requires the presence of three employees of the California Correctional Women’s Facility (“CCWF”) at Chowchilla, California. In addition, Plaintiff requests two blank subpoenas to serve two witnesses who are willing to testify but require documentation for their employers.

The Court’s Amended Second Scheduling Order informed Plaintiff of the procedures she must follow to obtain the attendance of incarcerated witnesses and unincarcerated witnesses who are willing or who refuse to testify. Here, Plaintiff informs the Court that she requires the presence of Correctional Lieutenant S.L. Kent, Correctional Officer R. Overstreet, and Medical Technical Assistant (“MTA”) SadSad. In addition, Plaintiff requests two extra blank subpoenas

1 to serve two more individuals who are willing to testify but who cannot leave their employment  
2 without a court order or subpoena.

3 As indicated in the Amended Second Scheduling Order, a Plaintiff seeking a witness's  
4 presence who is refusing to testify must submit the appropriate sum of money to cover the daily  
5 witness fee and transportation expenses. In this case, because all of the individuals are employed  
6 at CCWF at Chowchilla, the money order for *each witness* must be in the amount of \$ 69.97 and  
7 submitted to the Court on or before September 20, 2005.<sup>1</sup> Upon receipt of the money orders, the  
8 Court will complete the subpoena and order service on the witness by the United States Marshall.  
9 **The subpoena will not be served on the unincarcerated witness by the United States**  
10 **Marshall unless the money order is tendered to the court.**

11 With respect to the two unidentified individuals Plaintiff seeks blank subpoenas, the  
12 Court will not issue a blank subpoena for unknown individuals. Even where a witness is willing  
13 to testify but requires a court order or subpoena, Plaintiff must identify the individual to be  
14 served and must make a written offer of proof from the individual as to whether he or she is  
15 willing to testify and what that testimony might be.

16 The Court notes further that Plaintiff has named numerous witnesses in her pretrial  
17 statement, however, she has not submitted the appropriate motions to obtain the attendance of  
18 these witnesses as is required by the Amended Scheduling Order. Although Plaintiff may call  
19 any of the named defendants as witnesses, she may not call any other of Defendant's witnesses  
20 unless they are present and listed on Plaintiff's pretrial statement. Plaintiff may cross-examine  
21 any other witness that Defendant calls to testify.

22 Finally, the Court notes that Plaintiff's letter does not contain an attached proof of  
23 service. Pursuant to the Local Rules and the Federal Rules of Civil Procedure, all pleadings filed  
24 with the Court must be served on the opposing party. Local Rule 5-135(b); Fed.R.Civ.P. 5. Any  
25 future communications with the Court that are not served on the opposing party will be stricken  
26

---

27 <sup>1</sup> This amount covers the daily witness fee of \$40.00 plus travel expenses in the amount of \$29.97. In the  
28 event the witnesses is required to testify on more than one day, Plaintiff will be required to tender the daily witness  
fee and travel fees again.

1 from the record.

2 Accordingly, the Court HEREBY ORDERS:

3 1. Plaintiff is informed that she must tender a money order payable to Lt. Kent, C/O  
4 Overstreet and MTA Sad Sad in the amount of \$ 69.97 on or before the deadline  
5 of September 20, 2005, set forth in the Court's Amended Second Scheduling  
6 Order.

7 2. The Clerk of Court is DIRECTED to SERVE a courtesy copy of Document 70  
8 Plaintiff's "Notice" filed on August 29, 2005, on Defendant.

9 IT IS SO ORDERED.

10 **Dated:** September 6, 2005  
b6edp0

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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