

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Giovanni McDowell v. Steve Smith, et al.

McDowell v. Smith · No. 1:24-cv-00500-SAB (PC) · Decided October 15, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Giovanni McDowell’s motion for issuance of a subpoena duces tecum because he had not first sought the documents from Defendants through discovery or moved to compel production. The court directed the Clerk of Court to send Plaintiff a one-time courtesy copy of specified exhibits attached to his original complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 15, 2025
DOCKET	1:24-cv-00500-SAB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a pro se prisoner proceeding in forma pauperis under 42 U.S.C. § 1983, moved for issuance of a subpoena duces tecum seeking grievances attached to his original complaint during the discovery phase of the action.
STANDARD OF REVIEW	The court applied the Federal Rules of Civil Procedure governing discovery and subpoenas; no separate appellate standard of review was stated.
PRECEDENTIAL VALUE	nonprecedential trial-court order
PARTIES	Giovanni McDowell v. Steve Smith, et al.

TOPICS

- discovery dispute
- civil procedure
- prisoners rights
- section 1983

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- discovery

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to issuance of a subpoena duces tecum for grievances attached to his original complaint without first seeking the documents from Defendants through ordinary discovery procedures.
2. Whether the court should provide Plaintiff a courtesy copy of the grievance exhibits attached to his complaint.

HOLDINGS

1. A pro se prisoner seeking a subpoena for documents from a nonparty must first establish that the documents are not equally available to him and cannot be obtained from Defendants through a request for production; if Defendants object, the required next step is a motion to compel. Because Plaintiff had not shown that he followed those steps, the motion for issuance of a subpoena was denied.
2. Although the subpoena motion was denied, the court directed the Clerk to send Plaintiff a one-time courtesy copy of the specified exhibits attached to his complaint.

FACTUAL BACKGROUND

Plaintiff sought grievances submitted as exhibits to his original complaint through a subpoena duces tecum. The case was in discovery, and the requested documents were potentially obtainable from Defendants through a request for production. Plaintiff had not demonstrated that he had first requested the documents from Defendants or moved to compel their production.

PROCEDURAL HISTORY

The action was proceeding on Plaintiff's deliberate-indifference claim against Defendants Smith, Storey, Davis, and Cobian. Plaintiff filed a motion for issuance of a subpoena duces tecum. The court denied the motion because Plaintiff had not first sought the documents from Defendants through a request for production or, if necessary, filed a motion to compel, but directed the Clerk to send Plaintiff a one-time courtesy copy of specified complaint exhibits.

DISPOSITION

other

CASES CITED

- Sands v. Lewis, 886 F.2d 1166, 1169 (9th Cir. 1989)
- Lewis v. Casey, 518 U.S. 343, 351 (1996)
- Jones v. Franzen, 697 F.2d 801, 803 (7th Cir. 1983)
- Wanninger v. Davenport, 697 F.2d 992, 994 (11th Cir. 1983)
- Reynolds v. Wagner, 128 F.3d 166, 183 (3d Cir. 1997)

OPINION

Giovanni McDowell v. Steve Smith, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 GIOVANNI MCDOWELL, No. 1:24-cv-00500-SAB (PC)

12 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION

FOR SUBPOENAS

13 v. (ECF No. 57) 14 STEVE SMITH, et al.,

ORDER DIRECTING CLERK OF COURT TO

15 Defendants. SEND COURTESY COPY OF CERTAIN

DOCUMENTS

16 17 18 Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42
U.S.C. 19 § 1983. This action is proceeding on Plaintiff's deliberate indifference claim against
Defendants 20 Smith, Storey, Davis, and Cobian. 21 On October 6, 2025, Plaintiff filed a motion
for issuance of a subpoena duces tecum 22 commanding the production of the grievances
submitted as exhibits attached to his original 23 complaint. (ECF No. 57.) 24 This case is currently
in the discovery phase and the deadline for the completion of all 25 discovery is set for November
10, 2025. Subject to certain requirements, Plaintiff is entitled to the 26 issuance of a subpoena
commanding the production of documents, electronically stored 27 information, and/or tangible
things from a nonparty, Fed. R. Civ. P. 45, and to service of the 28 1 subpoena by the United States
Marshal, 28 U.S.C. 1915(d). However, the Court will consider 2 granting such a request only if the
documents or items sought from the nonparty are not equally 3 available to Plaintiff and are not
obtainable from Defendants through a request for the production 4 of documents, electronically
stored information, and/or tangible things. Fed. R. Civ. P. 34. If 5 Defendants object to Plaintiff's
discovery request, a motion to compel is the next required step. If 6 the Court rules that the
documents, electronically stored information, and/or tangible things are 7 discoverable but
Defendants do not have care, custody, and control of them, Plaintiff may then seek 8 a subpoena.
Fed. R. Civ. P. 26(b), 34(a)(1). Alternatively, if the Court rules that the documents or 9 items are
not discoverable, the inquiry ends. Fed. R. Civ. P. 26(b). 10 In this instance, Plaintiff has not
demonstrated that he sought the documents from 11 Defendants through a request for the
production of documents, electronically stored information, 12 and/or tangible things, and, if he
has done so, he has not filed a motion to compel the production of 13 the requested documents.
Therefore, Plaintiff's motion for the issuance of a subpoena duces tecum 14 is denied. However, to
the extent Plaintiff is requesting a copy of the grievances attached to his 15 original complaint, the
Court will grant a one-time exception and provide him a copy of such 16 documents.1 17 /// 18 ///
19 /// 20 /// 21 /// 22 /// 23 /// 24 25 1 There is no constitutional right to receive photocopies free of

charge. *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1990), overruled on other grounds by *Lewis v. Casey*, 518 U.S. 343, 351 (1996); see also *Jones v. Franzen*, 697 F.2d 801, 803 (7th Cir. 1983) (“[B]road as the constitutional concept of liberty is, it does not include the right to xerox.”); 26 *Wanninger v. Davenport*, 697 F.2d 992, 994 (11th Cir. 1983) (finding no violation of “appellant’s constitutional rights when [prison officials] refused to provide him with free photocopies....”); *Reynolds v. Wagner*, 128 F.3d 166, 183 (3d Cir. 1997) (“[T]here is no First Amendment right to subsidized [legal] mail or photocopying.”). Indeed, the Clerk of Court charges \$.50 per page for copies of documents. See 28 U.S.C. § 1914(b). 28 1 Based on the foregoing, it is HEREBY ORDERED that: 2 1. Plaintiff’s motion for issuance of a subpoena, (ECF No. 57), is DENIED; and 3 2. The Clerk of Court shall send Plaintiff a courtesy copy of the exhibits attached to 4 Plaintiff’s complaint, (ECF No. 1), at pages 10, 11, 12, 19, and 20. 5 6

7 IT IS SO ORDERED. FA. Be

g | Dated: _ October 15, 2025 ;

STANLEY A. BOONE

9 United States Magistrate Judge 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28