

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.

OPINION

1 2 3 4 5 6 7 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 27 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