

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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HARRISON FRANKLIN,

Plaintiff,

ORDER

v.

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,  
PAULINE BELGADO, SARGENT SIEDOSCHLAG,  
PETER HUIBREGTSE, LINDA HODDY-TRIPP,  
MS. BLACKBOURNE, JIM WEGNER, SARGENT  
LIND, CAPTAIN JOHN P. GRAHL, SARGENT  
DAN MEEHAN, CO II MIKE GLAMAN, and  
NURSE HOLLY MEIER,

Defendants.  
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In an order dated March 13, 2003, I denied plaintiff Harrison Franklin's motion for appointment of counsel because I concluded that plaintiff had failed to show that the case was too complex for him to represent himself or that the presence of counsel would make a difference in the outcome of his lawsuit. Plaintiff has now filed a motion for reconsideration in which he asserts numerous reasons why the court erred in refusing to appoint counsel:

- documents that he sent to another inmate for the purpose of obtaining legal assistance "disappeared"; when the envelope in which he sent the documents was

returned to him, some of the documents were missing

- during the previous month, other “legal documents” had “come up missing,” including medical records and a brief plaintiff wrote to the court of appeals
- prison officials have refused to allow him to seek legal assistance from other inmates
- he has “been denied documents relating to” defendant Lind’s “actions against Franklin”

Plaintiff argues that he “needs counsel to stop this constant harassment.”

A prisoner’s fear of retaliation is not a reason for a court to appoint counsel. The purpose of appointing counsel is to aid a pro se litigant who is unable to represent himself and whose chances of success would be significantly improved by the lawyer’s assistance. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995) (citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)). Counsel could not stop defendants from retaliating against plaintiff.

To the extent that plaintiff’s motion may be construed as one to enjoin defendants from retaliating against him, that motion must be denied as well. It is the policy of this court to require a litigant alleging retaliation to present the claim in a lawsuit separate from the one that is alleged to have provoked the retaliation. Thus, if plaintiff believes that defendants are retaliating against him because he is challenging their actions, he may file a separate lawsuit against them for that behavior.

The court recognizes an exception to this policy only where it appears that the alleged

retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit. Thus far, plaintiff has not shown that defendants have physically impaired his ability to proceed. With respect to plaintiff's ability to seek legal assistance from inmates, he has provided no evidence that defendants have prevented him from doing so. He alleges only that some documents that he sent to an inmate "disappeared." Plaintiff does not identify with any specificity what "legal documents" defendants refused to deliver, whether the documents ever made it to the other inmate, or, if they did not, the reason prison officials gave for not delivering the documents. Even assuming the truth of plaintiff's allegation that defendants are denying him access to jailhouse lawyers, this would not mean that plaintiff is entitled to a preliminary injunction. Inmates do not have a constitutional right to receive legal assistance from a particular inmate when the prison provides other means of insuring the inmate's right of access to the courts. Johnson v. Avery, 393 U.S. 483 (1969); Gometz v. Henman, 807 F.2d 113 (7th Cir. 1986) (prison officials' refusal to deny plaintiff access to one jailhouse lawyer did not deny his access to courts when there were legitimate penological reasons for doing so, other jailhouse lawyers were available and prison had law library). Plaintiff has not shown that he has been denied all means of protecting his right to access of courts.

With respect to plaintiff's "missing" documents, he still has failed to explain how his ability to prosecute *this* case has been harmed. If defendants have interfered with

defendant's ability to file briefs in a case before the Court of Appeals for the Seventh Circuit, then it is that court from which plaintiff should seek relief. Further, it is not enough to say that the missing documents "show the indifference plaintiff experienced at the hands of defendants." Rather, he must identify *specifically* the documents that are missing and what their contents are so that this court can determine whether plaintiff needs the documents to prosecute this action. Plaintiff must also provide the court with evidence to support his belief that defendants confiscated his legal materials for the purpose of denying his access to courts. I cannot consider plaintiff's motion until he has provided such evidence.

Plaintiff alleges that he has been denied documents relating to defendant Lind. As I explained in the March 13 order, if plaintiff believes that defendants are denying him discovery materials improperly, the appropriate response is a motion to compel under Fed. R. Civ. P. 37. However, before plaintiff files such a motion, he must attempt to resolve his dispute without the aid of the court. If his efforts do not succeed, then his motion should state the efforts he made to obtain the documents, identify exactly what materials defendants have refused to produce and explain why the documents are relevant to this case.

Finally, I note that defendants have filed two motions to dismiss in this case. The deadlines for plaintiff to respond to these motions are quickly approaching. I have already granted plaintiff an extension to respond to one of the motions to dismiss and I will not grant any further extensions. Therefore, I strongly recommend to plaintiff that he focus his

energies for the time being on responding to these motions rather than continuing to request this court to appoint him counsel.

ORDER

IT IS ORDERED that

1. Plaintiff Harrison Franklin's motion to reconsider this court's denial of plaintiff's motion for appointment of counsel is DENIED.

2. Plaintiff's motion for a preliminary injunction is DENIED.

Entered this 20th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge