

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

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EDWIN GONZALES,

Plaintiff,

v.

DR. BOB BEVARD and NURSE STEVE HELGERSON,

Defendants.

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ORDER

07-C-144-C

In this action, plaintiff Edwin Gonzales has been allowed to proceed on his claim that defendants Bob Brevard and Steve Helgersen violated his Eighth Amendment rights when they failed to provide him appropriate dental care in connection with the removal of his tooth. However, plaintiff is not proceeding in forma pauperis. At the time he filed his complaint in mid-March of this year, his trust fund account statement showed that his average monthly balance was \$2652, which meant he did not qualify for pauper status for the purpose of paying his filing fee or serving his complaint on the defendants. Unfortunately, the court overlooked the fact that he was not entitled to the benefits of pauper status for the purpose of serving the complaint on the defendants. Instead, it forwarded his complaint to the Attorney General's office under an informal service

agreement and, later, when the Attorney General advised the court that it could not accept service on behalf of retired Department of Corrections' employee Sue Ward, asked the United States Marshal to attempt to serve her with the complaint. (Sue Ward has since been dismissed from this lawsuit because the Marshal was unable to locate her to serve her with plaintiff's complaint.) Now plaintiff has written to bring to the court's attention the fact that when he filed his complaint, he also submitted a motion for appointment of counsel, which he has designated as "Exhibit E" to his complaint. He asks that the court rule on the motion.

28 U.S.C. § 1915(e)(1) authorizes a court to "request an attorney to represent any person *unable to afford counsel*." (Emphasis added.) As noted above, plaintiff's average monthly balance at the time he filed his complaint just a couple months ago was \$2652. He has no living expenses, other than minor purchases he makes at the prison canteen. He has an average monthly income of approximately \$80. As straightforward as plaintiff's case is, and with numerous lawyers willing to take personal injury types of lawsuits on a contingent fee basis, it is not at all inconceivable that a lawyer would be willing to represent his interests in this case for a \$2500 retainer and small additional monthly payments. Therefore, I cannot find at this time that plaintiff qualifies for appointment of counsel under § 1915(e)(1).

I note that as part of "Exhibit E," plaintiff has included copies of several letters he

received from lawyers declining to assist him in this case. However, half of the lawyers appear to practice in firms or with organizations far from Wisconsin. One is located in Indiana, another in Wyoming, another in Connecticut, and another in New York. The four remaining letters plaintiff sent appear to have gone to Wisconsin based firms, but one advised plaintiff that its location was too far from Portage where plaintiff is housed to make it cost-effective to take his case. Another indicated it did not handle personal injury cases. None appears to have had an idea that plaintiff might be able to pay at least a portion of the costs of his representation. Therefore, if plaintiff's financial circumstances change and he decides to submit a new trust fund account statement and request a finding that he is eligible for pauper status for the purpose of considering him for appointed counsel, he will have to submit at least one more letter from a lawyer in Wisconsin who he asked to represent him and who declined to take his case. See Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992) (party seeking appointed counsel must first make reasonable effort to secure counsel on his own).

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel is DENIED

because he does not qualify financially for appointed counsel under 28 U.S.C. § 1915(e)(1).

Entered this 17th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge