

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

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BRADLEY ALLEN JONES,

Plaintiff,<sup>1</sup>

ORDER

v.

10-cv-44-bbc

DARREL KUHLM,

Defendant.

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This is a prisoner civil rights case brought under 42 U.S.C. § 1983 in which plaintiff Bradley Allen Jones contends that defendant Darrel Kuhl failed to protect him from another prisoner when he was at the Columbia County jail. Now before the court are plaintiff's motions for leave to amend his complaint and for appointment of counsel. I will deny both motions.

Plaintiff seeks leave to amend his complaint for the sole reason that he seeks to state explicitly that he "suffers from emotional and psychological injury" and assert a claim for

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<sup>1</sup> In plaintiff's original complaint, his middle name was spelled "Alan" in the caption, but since then he has consistently spelled it "Allen." I have amended the caption accordingly.

such damages. However, his complaint already implicitly includes such an injury, by the very nature of the attack he suffered by the other prisoner, and plaintiff is already seeking “compensatory damages,” which is a term broad enough to encompass a request for emotional damages. Because it is not necessary for plaintiff to amend his complaint to pursue a claim for emotional and psychological injury, I will deny his motion for leave to amend.

Plaintiff’s request for appointment of counsel will also be denied. However, before explaining why, I pause to note that defendant has filed an opposition brief to plaintiff’s motion to appoint counsel. That brief will be disregarded for the simple reason that defendant has no standing to oppose a request for counsel. Indeed, it is unclear what useful purpose it could serve for a party’s counsel to intervene to challenge a pro se litigant’s request for legal assistance.

That said, plaintiff’s request fails on its own. Plaintiff has taken the initial step of making a reasonable effort to find a lawyer on his own without any success, as required under Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). However, under Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007), a court must consider both the complexity of the case and the plaintiff’s ability to litigate it when deciding whether to appoint counsel, and at this early stage, nothing about this case or plaintiff’s ability to litigate it suggests that the court should appoint counsel. With respect to complexity of the case, the case is a

single-defendant case that comes down to what defendant knew about the dangerous nature of the attacking prisoner and what defendant did with that information. At most, this sort of case presents a moderate challenge in discovery. However, plaintiff has been given instructions about how to perform discovery and may bring a motion to compel discovery if his attempts fail.

As for plaintiff's competence, he has responded well to guidance from the court so far and he has shown that he can express himself clearly and articulately in all his filings. Although he mentions that he has had help, he continues to provide clear communications to the court, even now that that help has disappeared. See, e.g., dkt. #32 (letter). At this stage of the proceedings, I am not satisfied that the case is so complex or plaintiff so incapable of handling it that appointment of counsel is warranted. It is possible that a later stage of the proceedings will show the case to be more complex than it appears or plaintiff to be less capable of handling the case. At that point, plaintiff is free to move again for appointment of counsel.

#### ORDER

IT IS ORDERED that:

1. Plaintiff Bradley Allen Jones's motion for leave to amend his complaint, dkt. #20, is DENIED as unnecessary.

2. Plaintiff's motion for appointment of counsel is DENIED without prejudice to his refiling the request at a later stage of the proceedings.

Entered this 19th day of July, 2010.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge