

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

TIMOTHY FRANCIS RIPP,

Plaintiff,

v.

JANET NICKEL, MARC CLEMENTS,
GREGORY GRAMS, AL MORRIS
and ANTHONY ASHWORTH,

Defendants.

ORDER

10-cv-492-bbc

Plaintiff, a prisoner presently confined at the Columbia Correctional Institution in Portage, Wisconsin, is proceeding in this case on his claims that defendants Nickel, Clements, Grams, Morris and Ashworth disciplined him for threatening to file a lawsuit or grievance, in violation of his rights under the First Amendment. Plaintiff's brief in opposition to defendants' motion for summary judgment was due on July 6, 2011. Now before the court is plaintiff's motion for use of the law library and for an extension of time, dkt. 25 and motion for appointment of counsel, dkt. 26

In his motion for use of the law library, plaintiff asks to the court to "grant the plaintiff extra law library time." Plaintiff also asks the court to notify the Columbia Correctional Institution of his deadline to respond to defendants' motion for summary judgment and to extend this deadline by 30 days. In regards to plaintiff's request for extra law library time, this court does not have any authority to interfere with a prison's internal policies such as granting extra access to the law library. The court's role is limited to protecting an inmate from an unconstitutional interference with his right to petition the courts, and to applying the court's own case management procedures of the deadlines. Plaintiff's motion for use of the law library will be denied.

As to plaintiff's request for an extension of time to respond to defendants' motion for summary judgment, because the schedule allows for a short extension of the deadlines, plaintiff may have two more weeks, until July 27, 2011 in which to file his summary judgment response. Defendants may file their reply by August 8, 2011. As an additional note, plaintiff should be aware that his inability to make frequent trips to the law library should not interfere with his ability to litigate his case. Rather, it is the *factual evidence* plaintiff gathers in discovery that will be most important in determining the success or failure of his claims.

As for plaintiff's motion to appoint counsel, I explained to plaintiff in his other case that this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. Congress has appropriated funds for court-appointed counsel in criminal cases but it has not appropriated any funds for court-appointed counsel in civil cases like this one. Lawyers who accept appointments to represent pro se plaintiffs in civil cases can obtain compensation for their services only if they are successful and even then, the compensation may fall short of their time and effort. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

In his motion, plaintiff says he requires the assistance of a lawyer because his imprisonment in segregation will greatly limit his ability to litigate this case, the issues in this case are complex, and proving his claim will require significant research and investigation. With respect to the complexity of the case, the law governing plaintiff's claim is straightforward and was explained to him in the order granting him leave to proceed. As for the importance of

research and investigation, plaintiff's case hinges on the facts. Plaintiff has personal knowledge of the facts and circumstances surrounding the lawsuit and he should already possess, or be able to obtain through discovery, the relevant documentation that he needs to prove his claim.

With respect to his argument that imprisonment limits his ability to litigate this case, plaintiff is in the same position as all the other pro se prisoner litigants. In this lawsuit, plaintiff is capable of narrating what happened (or didn't happen), when, where and who was involved. He should be able to obtain to his own records to corroborate this information, and he can request other relevant documents, such as staff reports. Put another way and to repeat what I said above, plaintiff's case depends on the facts. This court can and will apply the appropriate law to these facts, even if plaintiff cannot provide the law on his own or does not understand how the law applies to his facts. The court's procedures were explained to him in the December 17, 2010 pretrial conference order. I urge plaintiff to consult the pretrial conference order. If at some point he does not understand something that is happening in this case, he may write the court for additional clarification about procedures.

In denying plaintiff's motion for an attorney, this decision reflects my assessment of plaintiff's ability to prosecute the case at this stage. If at some point plaintiff's circumstances change, and he no longer can adequately litigate the case, then he is free to write to the court for additional clarification about procedures or to renew his motion for appointment of counsel, and the court will look at his situation again.

ORDER

IT IS ORDERED that

1. Plaintiff Timothy Ripp's motion for use of the law library , dkt. 25, is DENIED;
2. Plaintiff's motion for an extension of time to respond to defendants' motion for summary judgment, dkt. 25, is GRANTED in part. Plaintiff's summary judgment response deadline is moved to July 27, 2011. Defendants may have until August 8, 2011 in which to serve and file a reply.
3. Plaintiff's motion for appointment of counsel, dkt. 26, is DENIED without prejudice.

Entered this 12th day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge