

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

JEFFREY E. OLSON,

Plaintiff,

v.

DONALD MORGAN, RANDY SCHNEIDER
and DR. LILLY TENEBRUSCO,

Defendants.

ORDER

11-cv-282-slc

Plaintiff is proceeding in this case on his claims that defendants Morgan and Schneider failed to protect him from an attack by another inmate, that defendant Schneider filed conduct reports against plaintiff in retaliation for plaintiff's complaints that Schneider failed to protect him, and that defendant Tenebrusco failed to provide plaintiff with medical treatment for the injuries caused by the other inmate's attack. Now before the court are plaintiff's renewed motion for an injunction, renewed motion for appointment of counsel and motion for an order compelling discovery. *See* dkts. 41 and 42.

On November 22, 2011, I denied plaintiff's original motion for preliminary injunctive relief because it concerned events that are not a part of this litigation. I advised plaintiff that this lawsuit is about events at the Columbia Correctional Institution and that if he wished to raise concerns about his treatment at the Waupun Correctional Institution in this court, he would have to file a new complaint, after making sure to pursue administrative remedies in the prison system first.

In plaintiff's renewed motion for injunctive relief, he states that according to the Federal Rules of Civil Procedure, he should have been accorded a hearing to elicit evidence and/or testimony before a decision was made. This is incorrect. As implied by the November 22 order, and as a general rule, this court will not grant injunctive relief against a person who is not a party

to the lawsuit. Thus, I will not grant injunctive relief against the officials at Waupun Correctional Institution in this case. In addition, plaintiff's motion for injunctive relief does not comply with this court's procedures for obtaining preliminary injunctive relief. Enclosed with this order is a copy of those procedures, along with a complaint form should plaintiff decide to file a new case seeking preliminary injunctive relief against officials at the Waupun Correctional Institution.

Also included in plaintiff's renewed motion for preliminary injunctive relief is a request that the court use the United States Marshals and/or the Federal Bureau of Investigation to look into state correctional and county and municipal jail incidents against inmates arrested or convicted of offenses against children. This request will also be denied. The checks and balances provided by the separation of federal power into three branches bar federal courts from ordering the Executive Branch's law enforcement agencies to investigate allegations of criminal misconduct. For the same reason, this court cannot bring criminal charges against Waupun Correctional Institution, the Wisconsin Department of Corrections, and county jails. Only the United States Attorney can initiate federal criminal proceedings. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

Turning to plaintiff's renewed motion for appointment of counsel, plaintiff states that he has contacted several attorneys and was denied services; however, he has not provided those rejection letters or the names and addresses of the attorneys he contacted. Even if plaintiff *had* submitted proof that three lawyers already have declined to represent him, I would deny his request for an attorney at this point because it is too early to tell whether this case is too complex for plaintiff to handle it on his own. Although plaintiff has not provided any reasons or documentation to support his request for an attorney, the court recognizes that a lawyer could do a better job for plaintiff than he can do for himself.

Unfortunately, this court does not have nearly enough lawyers available and willing to handle all of the prisoner cases filed in this district. If we did, then we would appoint an attorney in almost every case, but we get well over 200 new pro se lawsuits every year, and there are only about 10 to 15 lawyers who are willing and qualified to accept a pro bono assignment to a prisoner civil rights lawsuit. As a result, the court has no choice but to limit appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer. Plaintiff is free to renew his motion for appointment of counsel at a later time if he feels incapable of representing himself as the case proceeds, but he will have to provide the court the names and addresses of at least three lawyers who he has asked to represent him in this case and who turned him down along with a well-supported argument outlining why the court should grant his request.

Turning to plaintiff's motion to compel, plaintiff outlines several discovery documents that he says he needs and he requests an order from this court directing defendants to provide those documents. The state has responded by claiming the motion is premature because plaintiff did not request the discovery information prior to filing his motion. Even though defendants had not received plaintiff's discovery requests, they have received it now, and have provided responses to those requests in their response to plaintiff's motion to compel.

A motion to compel discovery is not proper before a discovery request has been denied. When plaintiff makes a formal discovery request of defendants, he will afford the defendants an opportunity to object in whole or in part to his request and provide an explanation for any objection. Plaintiff will then have an opportunity to narrow or clarify his request if necessary before seeking court intervention. When plaintiff completes this process, he may find that a motion to compel is unnecessary. It is the court's expectation that each of the parties provide good faith attempts to resolve their differences before coming to court. Plaintiff is encouraged

to re-read the section on discovery in the August 22, 2011 Pretrial Conference Order to help guide him in the procedure for conducting discovery. Plaintiff's motion to compel discovery is denied without prejudice.

ORDER

IT IS ORDERED that:

1. Plaintiff Jeffrey Olson's renewed motion for preliminary injunctive relief, dkt. 41, is DENIED;
2. Plaintiff's renewed motion for appointment of counsel, also dkt. 41 is DENIED without prejudice; and
3. Plaintiff's motion to compel, dkt. 42, is DENIED without prejudice.

Entered this 30th day of December, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge