

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

DERRICK HOWARD,

Plaintiff,

v.

PATRICK HOOPER,

Defendant.

ORDER

11-cv-629-bbc

Plaintiff, a prisoner presently confined at the Columbia Correctional Institution in Portage, Wisconsin, is proceeding in this case on his claims that defendant used excessive force against him in violation of his rights under the Eighth Amendment.

For the fourth time in this case, plaintiff has moved for appointment of counsel, and for the fourth time I am denying his motion because it is too early in the case to determine whether plaintiff's disabilities will overwhelm his ability to litigate this case. As this court has advised plaintiff three times before, plaintiff has not shown that the legal and factual difficulty of this case exceeds his demonstrated ability to prosecute it at this time. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007).

The only new argument plaintiff advances in support of this motion is that defendant has refused to provide plaintiff with certain confidential discovery documents. If plaintiff is seeking court assistance with his discovery disputes, instead of filing a motion to appoint counsel, the appropriate avenue for plaintiff is to file a motion to compel production of these documents or ask the court to inspect these documents *in camera*. If plaintiff wishes to pursue his request for production of the Secured Internal Management Procedure (SIMP), he should file a motion to compel or for *in camera* inspection as discussed in the December 13, 2011 preliminary pretrial conference order. So as not to mislead plaintiff, following this procedure does not necessarily

mean that the court will require the State to disclose this information to plaintiff, but the court can and will be a neutral evaluator of the information and plaintiff's need for it in this lawsuit.

Except for his misguided tenacity in his quest for an appointed attorney, plaintiff appears representing himself capably: his submissions are well organized and contain information appropriate to the type of document filed. Plaintiff appears to be pursuing discovery according to the Federal Rules of Civil Procedure and he has filed appropriately directed discovery requests to the defendant, *see* dkts. 21, 22 and 26. If at some point plaintiff is having difficulty litigating the case, he is free to write to the court for additional clarification about procedures. I encourage plaintiff to focus on gathering and organizing the evidence he will need to either prepare a summary judgment motion, which may be filed in this case by August 3, 2012, or to defend a motion filed by defendant. At the summary judgment stage, the record might establish that plaintiff requires the assistance of court-appointed counsel, but this is not a prediction or a promise from the court. What is clear at this time is that plaintiff does not meet the legal threshold for appointed counsel. Plaintiff remains free to renew his motion at an appropriate time later in this case.

ORDER

IT IS ORDERED that plaintiff Derrick Howard's fourth motion for appointment of counsel, dkt. 30, is DENIED without prejudice.

Entered this 5th day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge