

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

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SYLVESTER JACKSON,

Plaintiff,

v.

RANDALL HEPP, GARY H. HAMBLIN,  
TAMMY MAASSEN, KENNETH ADLER,  
DEBRA TIDQUIST, CARLA GRIGGS,  
GEORGIA KOSTOHRYZ, GREG MEIER,  
CHERYL MARSOLEK, BETTY PETTERSON,  
SGT. CLARK and JODI DOUGHERTY,

Defendants.  
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ORDER

11-cv-774-bbc

Pro se plaintiff Sylvester Jackson is proceeding on claims that various prison officials violated his rights under the Eighth Amendment by failing to treat his chronic back pain and complications that arose after he had surgery on his toes. Defendants have filed a motion for summary judgment. Plaintiff's deadline to respond was March 6, 2013. However, rather than filing his response, plaintiff has filed a motion for an extension of time and a motion for the court's assistance in recruiting counsel.

In his motion for an extension of time, plaintiff states that his legal materials were confiscated while he was transferred to a new institution and he did not get them back until February 22, 2013. Also, he states that defendants have not followed proper procedures in their "statement of facts" contained in their brief, so that he cannot properly respond to it.

Plaintiff seems to be confused about his responsibilities in briefing the summary judgment motion; he is not required to respond to the facts contained in a brief. Rather, he must respond to defendants' proposed findings of fact. This confusion is understandable in light of plaintiff's not having received any documents other than defendants' motion and brief. Because it appears that he has not received defendants' proposed findings of fact or supporting evidence, I will grant his motion for an extension of time to respond. Also, I will direct the clerk of court to send plaintiff new copies of defendants' proposed findings of fact and supporting materials.

As for plaintiff's motion for the court's assistance in locating counsel to represent him in the case, plaintiff's situation has not changed enough from November 2012 (when the court denied his previous motion for the court's assistance in recruiting counsel) to warrant granting his renewed motion. This is particularly so where plaintiff has not yet attempted to respond to defendants' motion for summary judgment. At this point, it is not clear that the difficulty of litigating this case exceeds plaintiff's ability. He is free to renew his motion following the summary judgment stage.

Finally, plaintiff asks how to obtain statements from nonparty correctional officers who have knowledge of plaintiff's foot infection. The proper method to obtain discovery of a nonparty is through Fed. R. Civ. P. 45, which authorizes the issuance of a subpoena compelling a witness's appearance for deposition. In any case, at the summary judgment stage of these proceedings, it is crucial that plaintiff explain the events from his own perspective by stating them in an affidavit and including them in his proposed findings of

fact.

## ORDER

IT IS ORDERED that

1. Plaintiff Sylvester Jackson's motion for an extension of time to submit his response to defendants' motion for summary judgment, dkt. #84, is GRANTED. Plaintiff may have until April 4, 2013 to file his response. Defendants may have until April 15, 2013 to file their reply.

2. Plaintiff's motion for the court's assistance in recruiting counsel, dkt. #85, is DENIED.

3. The clerk of court is directed to send plaintiff a copy of defendants' summary judgment materials as explained above.

Entered this 13th day of March, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge