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

LUIS VASQUEZ, DAVID GREENWOOD,
JAVIER SALAZAR, JULIAN LOPEZ
and ANTHONY RIACH,

Plaintiffs,

v.

DANIEL BRAEMER, DONALD STRAHOTA,
WILLIAM POLLARD, PAMELA ZANK,
and MICHAEL THURMER ,

Defendants.

ORDER

11-cv-806-bbc

In this case, plaintiffs Luis Vasquez, David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach are proceeding on their claims that defendants Daniel Braemer, Donald Strahota, William Pollard, Pamela Zank and Michael Thurmer violated the Eighth Amendment by subjecting them to conditions of confinement that caused plaintiffs to suffer serious physical and mental health problems. Now before the court are plaintiffs' motion for appointment of counsel and motion for use of release account funds to pay the remainder of their filing fees. *See* dkts. 39 and 41.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. Unfortunately, the majority of lawyers do not have the time, the experience or the willingness to take on such appointments. Therefore, the court appoints counsel only in cases in which there is a demonstrated need for appointment, using the appropriate legal test.

In deciding whether to appoint counsel, I must first find that plaintiffs have made reasonable efforts to find a lawyer on their own and have been unsuccessful or that they have

been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To show that they have made reasonable efforts to find a lawyer, plaintiffs must give the court the names and addresses of at least three lawyers that they have asked to represent them in this case and who turned them down. Plaintiffs make this showing by attaching a copy of a letter from a law firm who declined to represent them as well as letters sent to two attorneys by plaintiff Javier Salazar.

The next question is whether plaintiffs meet the legal standard for appointment of counsel. Litigants in civil cases do not have a constitutional right to a lawyer; federal judges have discretion to determine whether appointment of counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). They exercise that discretion by determining from the record whether the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Id*. at 655.

In their motion, plaintiffs say they have limited knowledge of the law and that they require the assistance of a lawyer because a lawyer would be able to better present the evidence at trial and cross examine witnesses. Plaintiffs further state that they are unable to afford counsel and their imprisonment will greatly limit their ability to litigate his case. These are not good reasons to appoint counsel because these handicaps are universal among pro se litigants. Plaintiffs were instructed at the preliminary pretrial conference on June 26, 2012 about how to use discovery techniques available to all litigants so that they can gather the evidence they need to prove their claim. In addition, plaintiffs were provided a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, which were written for the very purpose of helping pro se litigants understand how these matters work.

In their motion, plaintiffs also state that they that each suffer from a range of mental health challenges and that this case is too complex for them to litigate on their own. With respect to the complexity of the case, the law governing plaintiffs' claim was explained to them in the order granting them leave to proceed. Plaintiffs' case rests on facts, and they each have personal knowledge of the circumstances surrounding the lawsuit. They should already possess or be able to obtain through discovery relevant documentation they need to prove their claim. Although plaintiffs are concerned with their ability to represent themselves, they have done an adequate job so far in this case. Their complaint and subsequent filings have been clearly written and appropriately directed. They do not show that their asserted mental health problems have hindered their ability to prosecute this lawsuit.

I have also considered whether it is necessary to appoint an attorney because this is a multi-plaintiff lawsuit, with at least one of the plaintiffs incarcerated at a different institution from the others. Undoubtedly, it would be much easier for this group of plaintiffs to have a lawyer as the point person, handling the logistics in both directs (from plaintiffs to defendants and from defendants to plaintiffs). But the fact that the plaintiffs have decided to file a joint lawsuit doesn't change the legal test, and it doesn't change the fact that this court simply doesn't have enough attorneys to appoint to pro se litigants, even when they bundle a set of claims into one lawsuit. Theoretically, such bundling of claims would reduce the number of attorneys this court would need to have available to handle pro se prisoner lawsuits, but as a practical matter, there still will be many more pro se prisoner lawsuits than attorneys willing and able to take them.

Finally, there is no way of knowing this at this early stage in plaintiffs' case whether it will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial. As this case progresses, it might become clear that appointment of counsel is required, either for substantive or logistical reasons, but this is not clear right now, so for now, I will deny plaintiffs' motion. Plaintiffs are free to renew their motion at a later date.

Turning to plaintiffs' motion to use their release account funds to pay the remainder of the fees for filing this case, although it is commendable that plaintiffs are taking responsibility for paying their entire filing fee promptly, they cannot use their release account funds in the manner they request. The language in 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). With the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from his release account. Because plaintiffs cannot use their release account funds to pay the entire balance of the filing fees, I will deny their motion.

ORDER

IT IS ORDERED that:

1. Plaintiffs Luis Vasquez, Javier Salazar, David Greenwood, Julian Lopez and Anthony Raich's motion for appointment of counsel, dkt. 39, is DENIED without prejudice.

2. Plaintiffs' motion to use their release account funds to pay the remainder of the filing fees in this case, dkt. 41, is DENIED.

Entered this 13th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge