

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

DEON BOLDEN,

Plaintiff,

v.

DAVID CROSS,

Defendant.

ORDER

11-cv-855-bbc

Plaintiff Deon Bolden is proceeding in this action on his claim that defendant Cross failed to protect plaintiff from being assaulted by his cellmate in violation of the Eighth Amendment. We held a telephonic pretrial conference on April 24, 2012. Now before the court is plaintiff's renewed motion for appointment of counsel, *see* dkt. 13.

As a starting point, 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 resolving a motion for appointment of counsel, a district court must consider both the complexity of the case and the pro se plaintiff's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). In his motion, plaintiff says he has a learning disability, low-

level reading skills and has only completed the seventh grade. Plaintiff further states that he will need counsel to cross-examine witnesses at trial and present oral argument to a jury. Plaintiff says he has little knowledge of the law and relies on hit-or-miss assistance from other inmates. As difficult as these combined circumstances must be for plaintiff, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. Although plaintiff admits that he has received assistance from other inmates in preparing his filings thus far, his complaint and subsequent submissions are clear and contain information appropriate to the type of document filed.

The court will try to make litigating this case as easy for plaintiff as possible. The facts of this case are within plaintiff's personal knowledge, and the law governing plaintiff's claims was explained to him in the February 23, 2012 order granting him leave to proceed. In addition, plaintiff was instructed at the recent preliminary pretrial conference about how to use discovery techniques to gather the evidence he needs to prove his claim. In his motion, plaintiff lists several documents that he believes will be important to litigating his case. Plaintiff should follow the procedures set out in Rule 34 and explained to him in the April 25, 2012 pretrial conference order, which was written for the very purpose of helping pro se litigants understand how federal civil cases work in this court.

There is no way of knowing yet if plaintiff's case 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.

In denying plaintiff's motion, I stress that the rulings reflect my assessment of plaintiff's ability to prosecute the case at its current stage only. If at some point he is having difficulty litigating the case, he is free to write to the court for additional clarification about procedures or renew his motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff Deon Bolden's motion for appointment of counsel, dkt. 13, is DENIED without prejudice.

Entered this 11th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge