

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

RANDY McCAA,

Plaintiff,

v.

ORDER

12-cv-61-bbc

MICHAEL MEISNER, JANEL NICKEL,
DONALD MORGAN, BRIAN FRANSON,
TONY ASHWORTH, COREY SABISH,
DR. LESLIE BAIRD, DR. PATRICK KUMKE,
RAYMOND MILLONIG JR., TRAVIS BITTELMAN,
BRIAN NEUMAIER, MICHAEL RATA CZAK,,
JOSEPH EBERT and JOHN DOE 1,

Defendants.

Pro se plaintiff Randy McCaa is proceeding on various claims that prison officials violated his Eighth Amendment rights by failing to provide him adequate mental health care and then, when he engaged in acts of self harm, failing to provide him medical care for his physical injuries. Plaintiff has filed a second motion for appointment of counsel, which is now before the court.

In the court's March 14, 2012 screening order, Judge Crabb denied plaintiff's first motion for appointment of counsel because he had failed to provide the names of at least three lawyers who he asked to represent him in this case and who turned him down. Plaintiff now gives the court a list of several firms he has contacted and who have either turned him down or failed to respond to his request.

This is the correct first step but it does not end the inquiry. Under *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007), a court must consider both the complexity of the case and the plaintiff's ability to litigate it when deciding whether to appoint counsel. Although plaintiff's performance at the May 15, 2012 preliminary pretrial conference raises questions about

whether he will be able to fully litigate this action on his own, I conclude that it would be premature to appoint counsel at this preliminary stage of the litigation. The parties are currently briefing defendants' motion for summary judgment based on plaintiff's failure to exhaust his administrative remedies. Plaintiff should be able to respond to this narrow motion on his own, following the directions provided in the preliminary pretrial conference order. Essentially the court needs plaintiff to provide photocopies of plaintiff's inmate complaint, its denial, plaintiff's appeals and their denials, all the way through DOC's administrative chain. If plaintiff's claims survive the state's motion, then he is free to renew his motion for appointment of counsel. In doing so, plaintiff should explain in as much detail as he can how his mental illness is hampering his ability to litigate this action.

ORDER

It is ORDERED that plaintiff Randy McCaa's second motion for appointment of counsel, dkt. 20, is DENIED without prejudice to plaintiff renewing his motion at a later date.

Entered this 9th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge