

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

NATANAEL RIVERA,

Plaintiff,

v.

MICHAEL SCHULTZ, SAMUEL MENNING,
LAWRENCE PETERSON and JOHN DOE I,

Defendants.

ORDER

12-cv-240-bbc

Plaintiff Natanael Rivera, a prisoner at the Wisconsin Resource Center, is proceeding in this case on his claims that defendants, prison officials at the Green Bay Correctional Institution, subjected him to a strip search for the sole purpose of harassing and humiliating him. Plaintiff recently filed his third motion for appointment of counsel. Plaintiff states that he does not have the ability to litigate this case because it is complex and he suffers from mental health issues and a limited education. Additionally, plaintiff says he is not allowed to participate in the legal loan program and that the institution is stealing all of his money.

At the time plaintiff filed his two earlier motions for appointment of counsel, it was unclear whether he had made a reasonable but unsuccessful effort to find a lawyer on his own. *See Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). Plaintiff now has met that preliminary requirement. Even so, it is too early in this case to tell whether this case is too complex for plaintiff to handle on his own. Although plaintiff states that he lacks legal knowledge and skill, this is true for almost every pro se litigant. The court recognizes that a lawyer could do a better job for plaintiff than he can do for himself, but as plaintiff was told previously, there are not enough lawyers to appoint one in every case in which it is requested.

As a result, the court has no choice but to limit appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer.

Despite plaintiff's assertions to the contrary, the facts of this case are not complex. As noted above, plaintiff contends that defendants performed a strip search for the purpose of harassment and humiliation. Plaintiff possesses personal knowledge of how and when this incident occurred. Having a lawyer to help him tell his version of the facts is unnecessary. Moreover, the law governing the claims was explained to him in the July 5, 2012 order allowing plaintiff to proceed with this action. Plaintiff's ability to succeed on the claim will rest entirely upon facts presented on a motion for summary judgment or at trial.

As challenging as plaintiff's mental health issues may be to him, there is no indication that he is incapable of prosecuting this case. To the contrary, at the November 2, 2012 telephonic preliminary pretrial conference, plaintiff was cogent, articulate and well-prepared to make his points to the court. In short, plaintiff appears capable of conducting whatever limited discovery might be necessary in this case, collecting any additional evidence and following court procedures. Also, by now plaintiff should have received the preliminary pretrial conference order which provides him with information about how to use discovery techniques to gather the evidence he needs to prove his claim as well as copies of this court's procedures for filing or opposing dispositive motions and for calling witnesses. These procedures are written for the very purpose of helping pro se litigants keep their cases on track toward the best available outcome. It is too early to tell whether plaintiff's asserted mental health issues will prevent him from litigating this case, and there is nothing in the record suggesting that the facts and law relevant to plaintiff's claims are so complicated that they exceed plaintiff's ability to prosecute those claims. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007).

If at some point plaintiff does not understand something that is happening in this case, he is free to write to the court for additional clarification about procedures and the court will do its best to answer. That plaintiff may be running out of legal loan money is not an exceptional circumstance warranting appointment of counsel. Plaintiff will have to do the best he can with the limited resources he has. Accordingly, plaintiff's third motion for appointment of counsel will be denied, again without prejudice to plaintiff's renewing it at a later time.

ORDER

IT IS ORDERED that plaintiff Natanael Rivera's third motion for appointment of counsel, dkt. 37, is DENIED without prejudice.

Entered this 29th day of November, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge