

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

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QUEINTON LAVELL MATTHEWS, JR.

Plaintiff,

v.

ANDREW NETZ,

Defendant.

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ORDER

12-cv-247-slc

Plaintiff Queinton Matthews, is proceeding in this case on his claim that defendant retaliated against him for filing grievances and complaining about staff. Defendant has filed a motion for summary judgment for plaintiff's failure to exhaust his administrative remedies. Pursuant to the terms of the August 1, 2012 pretrial conference order, plaintiff had until October 1, 2012 in which to file his opposition. Instead of filing a brief in opposition, plaintiff filed a motion for appointment of counsel. *See* dkt. 29.

In deciding whether to appoint counsel, I must first find that plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To show that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers who he has asked to represent him in this case and who turned him down. Plaintiff has provided the names and phone numbers of two attorneys he says he has contacted. However, even if plaintiff had submitted three names of lawyers who turned him down, I would still have to deny his motion for appointment of counsel because his request is premature. Appointment of counsel is appropriate in those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the

plaintiff's demonstrated ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654, 655 (7th Cir. 2007).

Plaintiff has provided no evidence that he lacks the ability to respond to the pending motion by himself. It is a fairly simple motion, based solely on the defendant's claim that plaintiff did not properly exhaust his administrative remedies on his retaliation claims. The court's August 1, 2012 preliminary pretrial conference order explains how plaintiff should attempt to respond to defendant's claims on this point. *See* dkt. 16 at 4. This is a simple process that plaintiff should be able to handle by himself. Put another way, appointing an attorney to assist plaintiff in his response to this motion is unlikely to change the outcome. Either plaintiff exhausted his administrative remedies or he didn't; this information is in plaintiff's personal knowledge and should be easy for him to show. Accordingly, I will deny plaintiff's motion for appointment of counsel without prejudice to his filing it again at a later date.

However, because plaintiff has not yet responded to defendant's motion for summary judgment and because plaintiff has been recently transferred to the Waupun Correctional Institution, I will grant plaintiff until November 6, 2012, in which to respond to defendant's motion for summary judgment for failure to exhaust. Plaintiff will not receive any additional extensions of this deadline. Defendant may have until November 16, 2012, in which to serve and file his reply.

ORDER

IT IS ORDERED that

1. Plaintiff Queinton Matthews' motion for appointment of counsel, dkt. 29, is DENIED without prejudice.

2. Plaintiff may have an extension of time until November 6, 2012 in which to respond to defendant's motion for motion for summary judgment for plaintiff's failure to exhaust administrative remedies. Defendant may have until November 16, 2012 in which to file his reply.

Entered this 23<sup>rd</sup> day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge