

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

---

JEFFREY M. DAVIS, JR.,

Plaintiff,

ORDER

v.

12-cv-559-wmc

CINDY HARDING, DONNA MILLER,  
JENNIFER LEMKE, JASMINE RUTHERFORD,  
TONY E. GASSON, ALICIA HANS,  
KIRK RATCHMAN, MICHAEL DRAKE,  
TRACY ZUTZ, DEREK STOINSKI, DORIS DEHN,  
KALLY ROCKOW, KEVIN KAUFMANN, MICHAEL PRIEBE,  
CINDY WEILAND, THEODORE STERN,  
LIZ BARKER and MICHAEL ROBL,

Defendants.

---

In this case, plaintiff Jeffrey Davis is proceeding on a claim that defendants violated his rights under the Eighth Amendment and were negligent under state law by acting with deliberate indifference to his serious mental health needs by failing to take reasonable measures to stop him from harming himself. Now before the court are plaintiff's motions for assistance in finding counsel to represent him in this case.

As a starting point, this court would assist in recruiting a lawyer for 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 only assists in recruiting counsel in cases in which there is a demonstrated need, using the appropriate legal test.

In deciding whether to assist plaintiff, 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 that he has asked to represent him in this case and who turned him down. Plaintiff has made this showing by attaching copies of letters from six attorneys he has contacted.

The next question is whether plaintiff meets the legal standard for obtaining the court's assistance in recruiting 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 his motions, plaintiff reports that he suffers from continuous thoughts of self-harm. Plaintiff further states that he believes this is a complex case and that he has limited knowledge of the law and limited law library access. Additionally, plaintiff believes that a lawyer would be able to better conduct discovery, depose witnesses and secure expert witness testimony.

Although there is no doubt that a lawyer would be able to help plaintiff in these ways, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. Plaintiff argues that he has no legal knowledge and suffers from mental illness, but plaintiff's filings have been clear and appropriately directed. There is nothing in the record to suggest that plaintiff's is incapable of gathering and presenting evidence to prove his claims. Although plaintiff may be lacking in legal knowledge and skill, this handicap is almost universal among pro se litigants.

In his most recent motion filed on March 5, 2013, plaintiff says that he is unprepared to respond to defendants' motion summary judgment for failure to exhaust administrative

remedies without the assistance of counsel. Plaintiff can relax: the March 1, 2013 deadline for defendants to file the motion for summary judgment for failure to exhaust administrative remedies has passed and defendants have not filed this motion.

Finally, there is no way of knowing this at this early stage in plaintiff's case whether it will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. Plaintiff's mental health issues may present a legitimate concern, but he has not yet shown that they have affected his litigation of this case. As this case progresses, it might become clear that the court's assistance in the recruitment of counsel is required, but this is not clear right now, so for now I will deny plaintiff's motion. Plaintiff is free to renew his motion at a later date.

#### ORDER

IT IS ORDERED that plaintiff's motions for assistance in the recruitment of counsel, dkts. 16, 24, 30 and 32, are DENIED without prejudice.

Entered this 27<sup>th</sup> day of March, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge