

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

IAN DANIEL KOCH,

Plaintiff,

v.

JOHN AND JANE DOES,

Defendants.

OPINION & ORDER

12-cv-749-wmc

Plaintiff Ian Daniel Koch has been granted leave to proceed *in forma pauperis* on his claims that unidentified members of the medical staff of the Fond du Lac County Jail behaved with deliberate indifference to his serious medical needs. (Dkt. #10.) Koch now moves for the appointment of counsel (dkt. #13), which the court will deny at this time, without prejudice to later reconsideration, because Koch must first show that he has made reasonable efforts to find a lawyer on his own and has been unsuccessful.

As an initial matter, Koch should be aware that unlike defendants in criminal cases, civil litigants have no constitutional or statutory right to the appointment of counsel. *E.g.*, *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013); *Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997). The court may, however, exercise its discretion in determining whether to recruit counsel *pro bono* to assist an eligible plaintiff who proceeds under the federal *in forma pauperis* statute. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent an indigent civil litigant *pro bono publico*.”); *Luttrell*, 129 F.3d at 936. This means that while the court cannot issue an order appointing counsel to help Koch, it can attempt to recruit a volunteer. The court will only take this step if it determines that Koch’s case is appropriate for such efforts. *See Pruitt v. Mote*, 503 F.3d 647,

655 (7th Cir. 2007) (the central question in deciding whether to request counsel for an indigent civil litigant is “whether the difficulty of the case – factually and legally – exceeds the particular plaintiff’s capacity as a layperson to coherently present it to the judge or jury himself”); *Jackson v. County of McLean*, 953 F.2d 1070, 1072 (7th Cir. 1992) (discussing factors to consider in determining whether it is appropriate to recruit pro bono counsel for an indigent civil litigant).

Before deciding whether it is appropriate to recruit counsel, a court must find that the 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 at 1072-73. Koch has not indicated that he has undertaken a search for counsel on his own yet, nor that he has been prevented from making the effort to find a lawyer to represent him. To show that he has made “reasonable efforts” to recruit counsel, Koch should submit the names and addresses of at least three attorneys to whom he has applied for assistance and who have turned him down. Until he has done this, his motion for assistance in recruiting counsel is premature.

The court will, therefore, deny Koch’s motion without prejudice as to later reconsideration. Once Koch has taken the step of seeking counsel on his own, as required by *Jackson*, he may ask the court to reconsider this decision. If Koch does so, however, he should be sure to provide the names and addresses of at least three attorneys whom he has contacted *and* who have declined to assist him, as well as any additional information that will help the court determine whether the difficulty of his case exceeds his capacity to litigate it on his own.

ORDER

IT IS ORDERED that plaintiff Ian Daniel Koch's motion for the appointment of counsel (dkt. #13) is DENIED without prejudice as to later reconsideration.

Entered this 18th day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge