

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

CHARLES SHEPPARD,

Plaintiff,

OPINION & ORDER

v.

12-cv-703-wmc

WALKER, A. ARCHER, BREDEMANN,
GOLDSMITH, JANEL NICKEL, ZIEGLER,
DONALD MORGAN, MICHAEL MEISNER,
TIMOTHY CASIANA, BRIAN FRANSON,
and JOANNE LANE,

Defendants.

Plaintiff Charles Sheppard brings this proposed civil action alleging deliberate indifference to his medical needs, retaliation, and violations of his due process rights on the part of various staff members at Columbia Correctional Institution (“CCI”). Sheppard is eligible to proceed *in forma pauperis* and has made an initial partial payment toward the full filing fee for this lawsuit. *See* 28 U.S.C. § 1915(b)(1). In his complaint, Sheppard also asks the court to appoint counsel to represent him to preserve inmate witness testimony. (*See* Compl. (dkt. #1) 8.) Finally, Sheppard moves for a preliminary injunction seeking regular and consistent time in CCI’s legal library. (Dkt. #10.)

Because Sheppard is incarcerated, the court must first screen his complaint as required by the Prison Litigation Reform Act (“PLRA”) to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks money damages from a defendant who is immune from such relief. For reasons set forth below, the court will grant Sheppard leave to proceed on his claims against certain of the defendants, but will deny his motions for appointment of counsel and for a preliminary injunction without prejudice as to their later reconsideration.

ALLEGATIONS OF FACT

In addressing a *pro se* litigant's pleadings, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this order, the court accepts the plaintiff's well-pled allegations as true and assumes the following facts:

Plaintiff Charles Sheppard is and was at all relevant times a prisoner in the custody of the State of Wisconsin Department of Corrections. He is presently confined in CCI. All defendants are employed at CCI. Defendants Walker, A. Archer, and Goldsmith are Corrections Officers; defendants Bredemann, Morgan, Tim Casiana and Brian Franson are Security Supervisors; defendant Janel Nickel is the Security Director; defendant Ziegler is a Unit Manager; defendant Michael Meisner is the CCI Warden; and defendant Joanne Lane is a Complaint Examiner.

On April 5, 2012, while in CCI's general population, Sheppard became despondent and suicidal. He began banging on his cell door to get the attention of the unit staff, as per past instructions from psychological services staff. Officer Archer heard Sheppard banging on the door and alerted Officer Walker, who approached Sheppard's cell door. Sheppard told Walker he was feeling suicidal and needed to be placed on "Obs," short for observation status, which requires a person to be placed in a suicide-resistant cell with zero property except for a suicide smock.

Walker laughed at Sheppard, behaving as though Sheppard were joking. Sheppard explained that he was serious and wanted to kill himself; Walker responded, "Yeah, sure. Give me your electronics." Sheppard told Walker he could have all of his property and that he just wanted to go to Obs. Walker continued to treat Sheppard as though he were joking,

until Sheppard became agitated and demanded to see a “white shirt” (a security supervisor). Walker then stated, “Calm down. You’re fine,” and walked away from Sheppard’s cell.

After this exchange with Walker, Sheppard became deeply despondent and determined to commit suicide. He fashioned a bedsheet into a noose, at which time his cellmate became aware of what Sheppard was trying to do. His cellmate took the noose from Sheppard, tried to calm him and then began to bang on the door to get the attention of unit staff. Walker approached again and the cellmate held up the noose, informing Walker he needed to call a “white shirt.”

About one-half hour later, Security Supervisor Bredemann approached Sheppard’s door, and Sheppard explained that he wanted to commit suicide and needed to go to Obs. Bredemann refused to authorize Sheppard’s placement on observation status, however, and instead placed Sheppard on Temporary Lock-Up by transferring him to a different unit in General Population, where he would be housed alone. At no time on April 5 did Officer Bredemann, Walker, or Archer contact anyone from psychological services. In fact, Walker filed a conduct report against Sheppard for being “disruptive” in expressing his suicidal thoughts and continually requesting to be placed on Obs, which allegedly resulted in his placement on temporary lock-up. Sheppard was informed by Officer Goldsmith that he was on temporary lock-up later that night. Goldsmith provided Sheppard with a “Notice of Offender Placed in Temporary Lock-Up,” so he could write and sign a statement; Sheppard wrote that he was suicidal. Goldsmith read and signed the Notice. Goldsmith also failed to contact anyone from psychological services in response to Sheppard’s expressed suicidal thoughts.

On April 6, 2012, Sheppard still felt despondent and suicidal. He made another noose with his bedsheet and attempted to hang himself. Staff members had to rush into the room, cut him down, and subdue him to prevent him. After the suicide attempt, Sheppard was placed on Obs.

Ultimately, Security Director Janel Nickel reviewed and approved Walker's conduct report for Sheppard's conduct on April 5, 2012, as the result of which he was punished with 30 days of cell confinement by Adjustment Committee Members Ziegler and Morgan. Warden Michael Meisner approved and affirmed that punishment based on Walker's conduct report.

On or about April 12, 2012, Sheppard sent Warden Meisner a letter pursuant to CCI's policy asking that inmates attempt to resolve their issues with the relevant staff members informally before filing a formal grievance. On or about May 18, 2012, Security Supervisor Tim Casiana issued Sheppard a conduct report for "lying" in the letter to Meisner and for expressing his grievances regarding prison staff who ignored his suicidal thoughts and intentions. On the same day, Security Supervisor Brian Franson approved that conduct report, allowing a disciplinary action to proceed against Sheppard. As a result of this action, Sheppard was assigned a punishment of 150 days of Disciplinary Separation by Adjustment Committee Members Ziegler and Morgan. Meisner altered this punishment to 90 days, but approved it in all other respects, effectively condoning his staff members punishing inmates for filing grievances.

Sheppard also alleges that: (1) Complaint Examiner Joanne Lane has the authority to take corrective action in all matters regarding staff incidents against inmates; (2) she is aware of the incidents involving Sheppard; and (3) she has nevertheless permitted, approved

and “turned a blind eye” to staff misconduct. Finally, he alleges that Officer Archer “also facilitated the retaliatory actions taken against [him].”

Sheppard seeks declaratory and injunctive relief, as well as compensatory and punitive damages. He also asks this court to order emergency appointment of counsel in order to “preserve inmate witness testimony.”

OPINION

Section 1983 provides a private right of action against “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983. To establish liability under § 1983, a plaintiff must establish that: (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009). The court will address Sheppard’s Eighth Amendment deliberate indifference and his First and Fourteenth Amendment retaliation claims in order.

I. Sheppard’s Eighth Amendment Claim

The Eighth Amendment affords prisoners a constitutional right to medical care. *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Accordingly, deliberate indifference to the serious medical needs of prisoners violates the Eighth Amendment. *Snipes*, 95 F.3d at 590. “Deliberate indifference” means that defendants were aware of plaintiff’s substantial risk of serious harm but disregarded

that risk by failing to take reasonable measures to abate it. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Prison officials have a recognized duty to protect prisoners from harming themselves as a result of a mental illness. *Minix v. Canarecci*, 597 F.3d 824, 833 (7th Cir. 2010); *Cavalieri v. Shepard*, 321 F.3d 616, 620-21 (7th Cir. 2003). With respect to risk of suicide in particular, a prison official may violate the Eighth Amendment if he is alerted that an inmate is at risk of suicide and fails to take reasonable steps to prevent that harm. *Cavalieri*, 321 F.3d at 620-21; *Sanville v. McCaughtry*, 266 F.3d 724, 737-39 (7th Cir. 2001). Sheppard seeks to bring an Eighth Amendment claim against defendants Walker, Archer, Bredemann, Goldsmith, Nickel and Meisner for deliberate indifference to his substantial risk of committing suicide.

Taking Sheppard's allegations as true, he has successfully pled an Eighth Amendment deliberate indifference claim against Bredemann, Walker and Goldsmith. First, Sheppard claims to have been at an immediate and substantial risk of suicide during the events on April 5, 2012. Sheppard also alleges that he alerted Bredemann and Walker to that risk by explicitly informing them that he was suicidal and needed to go to Obs, and alerted Goldsmith to the risk when he wrote out a statement indicating he was suicidal, which Goldsmith read and signed. Finally, Sheppard alleges that none of those defendants contacted Psychological Services and, in fact, took no action at all to mitigate the danger Sheppard faced or to prevent Sheppard from attempting suicide.¹ Sheppard may therefore proceed on his Eighth Amendment claims against Bredemann, Walker and Goldsmith.

¹ This is something of an overstatement, since it appears that Officer Walker eventually notified Security Supervisory Bredemann, who in turn eventually placed him in Temporary Lock-Up, but the

Sheppard's claim against Officer Archer is less well stated, but still meets the low threshold for stating a claim at the screening stage. Sheppard does not explicitly allege actually telling Archer that he was at risk of suicide, nor does he indicate that Archer was present during Sheppard's conversations with other defendants. The actual awareness of risk that the Eighth Amendment requires may, however, be inferred from circumstantial evidence. *Farmer*, 511 U.S. at 842. Here, Sheppard has alleged that Archer was in a position to hear what was occurring in his cell -- indeed, Archer was the first defendant to hear him banging on his cell door -- and that Archer and Walker were in communication with one another. From these circumstances, the court will infer for screening purposes only that Archer was also aware that Sheppard was at risk of suicide and did nothing. Therefore, Sheppard may proceed on his claim against Archer as well.

Finally, Sheppard seeks leave to proceed on an Eighth Amendment claim against Nickel and Meisner. It is well established that liability under 42 U.S.C. § 1983 must be based on a defendant's personal involvement in the constitutional violation. *Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003). It is not sufficient simply to allege that these defendants are supervisors, because an individual cannot be held liable for a constitutional violation *solely* on the basis of his supervisory status. *T.E. v. Grindle*, 599 F.3d 583, 590 (7th Cir. 2010) ("Because there is no theory of respondeat superior for constitutional torts, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.") (internal quotation marks omitted). If a state official does not *directly* deprive an individual of a constitutional

court will infer at the screening stage at least that these actions were not meaningful steps to alleviate an obvious, immediate risk of Sheppard attempting suicide.

right, then to find personal involvement, the official must at least (1) have known about the unconstitutional conduct, *and* (2) facilitated it, approved it, condoned it or turned a blind eye to it. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).

Here, while Sheppard does not allege that Nickel and Meisner were directly involved in denying him help from psychological services, he does allege that they have “created an atmosphere” allowing staff members to ignore, mock and punish inmates for expression of suicidal thoughts. This allegation, if true, allows the inference that Nickel and Meisner were aware of their staff members’ behavior and condoned that behavior, thus generating an atmosphere of deliberate indifference to risks of suicide. Thus, Sheppard may proceed on his Eighth Amendment claims against these defendants as well.

While Sheppard has stated a claim sufficient to pass the low threshold for screening of his Eighth Amendment claims, his burden going forward will be much higher. Specifically, he will need to present admissible evidence not only that his suicidal state of mind constituted a serious medical need, but that each defendant was *aware* he was at substantial risk of serious harm and failed to take reasonable measures to abate that harm.² Negligence, even gross negligence, is insufficient to show deliberate indifference. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (citing *Estelle*, 429 U.S. at 105-06).

II. Retaliation and Discipline for Expression of Suicidal Thoughts

Next, Sheppard alleges retaliation in violation of the First Amendment and denial of due process in violation of the Fourteenth Amendment based on the discipline he received for his expression of suicidal thoughts. While he separates these claims into two, both state

² With regard to Nickel and Meisner, Sheppard’s burden is only slightly different. He will need to prove that they were aware of staff members’ behavior toward suicidal inmates and that they facilitated or approved that conduct.

a claim based on the same conduct: the discipline Sheppard allegedly received, in the form of a conduct report and resulting 30 days of cell confinement. For the First Amendment violation, he names defendants Walker, Archer, Bredemann, Goldsmith, Nickel, Ziegler, Morgan and Meisner; for the Fourteenth Amendment violation, he names all those defendants except Bredemann and Goldsmith.

“Where another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff’s claims under that explicit provision and not the more generalized notion of substantive due process.” *Conn v. Gabbert*, 526 U.S. 286, 293 (1999) (internal quotation marks omitted). Accordingly, the court will analyze these claims with reference to the First Amendment.³

A claim for retaliation under the First Amendment requires that a prisoner ultimately show “that (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was ‘at least a motivating factor’ in the Defendants’ decision to take the retaliatory action.” *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009). A prisoner’s speech can be protected even when it does not involve a matter of public concern. *Id.* at 551. All that is required is that it pass the test set forth in *Turner v. Safley*, 482 U.S. 78 (1987), which asks whether the restriction on the speech is reasonably related to a

³ Additionally, Sheppard does not appear to state a claim for a violation of due process here. *See Sandin v. Conner*, 515 U.S. 472, 486 (1995) (placing inmates in solitary confinement requires due process protections only if the discipline at issue “present[s] the type of atypical, significant deprivation in which a State might conceivably create a liberty interest”). *Id.* at 486. The Seventh Circuit has found that relatively short terms of segregation do not implicate a liberty interest under *Sandin*. *See, e.g., Townsend v. Fuchs*, 522 F.3d 765, 772 (7th Cir. 2008) (59 days); *Hoskins v. Lenear*, 395 F.3d 372, 374-75 (7th Cir. 2005) (60 days).

legitimate penological interest.⁴ *Id.* at 89. Furthermore, prison officials may not retaliate against an inmate for exercising his First Amendment rights, even if their actions would not independently violate the Constitution. *Zimmerman v. Tribble*, 226 F.3d 568, 573 (7th Cir. 2000).

Accepting all of Sheppard's factual allegations as true and drawing all reasonable inferences in his favor, Sheppard has stated a claim for retaliation under the First Amendment against Officer Walker. According to the complaint, Walker issued Sheppard a conduct report simply for requesting a mental health treatment, which ultimately resulted in a punishment of 30 days' cell confinement. Although discovery may establish that Walker had good grounds to ignore Sheppard's claim (or, at least, not take it seriously) and even to view the conduct as disruptive, no legitimate penological reason for punishing an inmate for such a request is *apparent* on the face of the complaint. As for the second factor, Sheppard does not specifically allege that the conduct report would likely deter future First Amendment activity, but drawing all inferences in his favor, the court may infer this fact. Finally, Sheppard alleges that Walker filed the conduct report due to his attempts to obtain immediate psychological help. This is enough to state a retaliation claim at the screening stage, and Sheppard may proceed against Walker.

Sheppard also names Security Supervisory Bredemann as a defendant, presumably for placing him on Temporary Lock-Up as a result of the conduct report. This is somewhat less clear-cut, since Bredemann apparently placed Sheppard on Temporary Lock-Up because

⁴ The *Turner* test involves four factors: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether alternatives for exercising the right remain to the prisoner; (3) what impact accommodation of the right will have on prison administration; and (4) whether there are other ways prison officials can achieve the same goals without encroaching on the right. *Turner*, 482 U.S. at 89-91.

he believed Walker's version of events, which would not support a finding that Bredemann took the action he did because of Sheppard's exercise of his First Amendment rights. Rather, it would support a finding that Bredemann punished Sheppard for what he believed to be disruptive behavior. At the screening stage, however, the court must draw all reasonable inferences in Sheppard's favor. Accordingly, since Sheppard has alleged that Bredemann knew of his actual request for mental health treatment, the court will infer that Bredemann transferred him to Temporary Lock-Up due to that request. Sheppard may, therefore, proceed against Bredemann as well.

Sheppard's retaliation claim against Archer and Goldsmith, however, do not survive even at the screening stage, because Sheppard does not allege that they were personally involved in the retaliatory action. Unlike Walker and Bredemann, it does not appear from Sheppard's complaint that either Archer or Goldsmith took *any* action in this case, beyond refusing to inform Psychological Services of Sheppard's suicidal state, which has already been addressed above. Sheppard's sole conclusory assertion that Archer and Goldsmith were two of several defendants who "allow[ed] and facilitat[ed]" the discipline, he has alleged nothing to make plausible their involvement in the constitutional violation at issue. Even presuming they knew about the unconstitutional conduct, Sheppard has not alleged that they did anything to facilitate or condone it (nor does it appear they would have had the power to affect Walker's or Bredemann's actions in any way, as both are Corrections Officers seemingly without any supervisory authority). *See Gentry*, 65 F.3d at 561 ("[S]ome causal connection or affirmative link between the action complained about and the official sued is necessary for a § 1983 recovery."). Sheppard has alleged no facts making plausible any causal connection between the alleged retaliatory actions and Archer and Goldsmith.

Finally, Sheppard names Nickel, who approved Walker's conduct report; Ziegler and Morgan, who issued Sheppard a punishment of 30 days' cell confinement due to the report; and Meisner, who affirmed the punitive disposition. As with Bredemann, the court will infer at this stage that these officials were aware of Sheppard's actual speech (an inference made plausible by the statement Sheppard made regarding his suicidal thoughts and intentions and which Goldsmith signed) and Walker's retaliatory conduct, but facilitated or at least condoned his actions by approving the conduct report and punishing Sheppard based on that report. *See id.* (an official satisfies the personal responsibility requirement of § 1983 when conduct causing the constitutional deprivation occurs at his direction or with his knowledge and consent) (quoting *Smith v. Rowe*, 761 F.2d 360, 369 (7th Cir. 1985)). While discovery may demonstrate that these defendants were in fact unaware of Sheppard's actual speech and of an allegedly retaliatory motive for Walker's conduct report, the court will not make such an assumption at the screening stage. Sheppard may accordingly proceed with a retaliation claim against Nickel, Ziegler, Morgan and Meisner.

III. Retaliation and Discipline for Filing a Grievance

Sheppard also alleges retaliation and violation of his due process rights based on the conduct report and disciplinary separation time he received for sending a letter to Meisner to complain about the way that staff had responded to his suicidal intentions. Specifically, he alleges that Casiana, Franson, Lane, Ziegler, Morgan, Meisner and Bredemann violated his First Amendment rights by "allowing and facilitating [his] discipline and punishment for his grievance and complaint to administrative staff." He also alleges that Casiana, Franson, Lane, Ziegler, Morgan, Meisner and Archer have violated his Fourteenth Amendment rights

“by allowing [him] to be disciplined with punitive measures for his written grievance and complaint, and for allowing Casiana to attempt to conceal CCI’s pattern of being systematically indifferent towards suicidal inmates by initiating a disciplinary action.” (*See* Compl. (dkt. #1) 7-9.) As above, the conduct Sheppard challenges is essentially the same in both claims, and so the court will also analyze these retaliation claims under the First Amendment.

Considering Bredemann first, Sheppard has failed to state a claim for First Amendment retaliation against him. He alleges no facts suggesting that Bredemann was involved in any way in the grievance procedure or that he even knew that Sheppard had written a letter to attempt informal resolution of his grievances.⁵ Accordingly, the court will not allow Sheppard to proceed on these grounds against Bredemann.

Against Casiana, Sheppard has alleged that: (1) he engaged in protected activity by filing an informal grievance as mandated by prison procedure, *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005) (“Prisoners are entitled to utilize available grievance procedures without threat of recrimination.”); (2) he was issued a conduct report for “lying,” which the court infers would be likely to deter prisoners from utilizing grievance procedures in the future; and (3) Casiana issued the conduct report to retaliate against Sheppard for expressing his grievances. Sheppard has, therefore, alleged facts sufficient to support a retaliation claim against Casiana at the screening stage.

⁵ Sheppard does not name Archer as a First Amendment defendant, but since the court is considering Sheppard’s Fourteenth Amendment claims as First Amendment retaliation claims, the court notes that nothing in the pleadings beyond Sheppard’s unsupported, conclusory allegation that Archer “facilitated the retaliatory actions” suggests that Archer was involved in the grievance process or in Sheppard’s resulting punishment.

Against Franson, who approved Casiana's report, and Ziegler and Moran, who issued Sheppard a 150-day disciplinary separation as punishment, Sheppard has also stated a claim for First Amendment retaliation at the screening stage. As discussed above, while it is possible that these defendants took the actions they did because they genuinely believed Casiana's version of events, the court will infer at this stage of the case that these defendants were aware of the retaliatory purpose of Casiana's behavior and acquiesced in that behavior by approving the conduct report and issuing Sheppard a punishment based on that report.

Finally, Sheppard alleges that Meisner has condoned CCI staff members' practice of punishing prisoners for filing grievances, as well as that Lane: has the authority to take corrective action in all matters regarding staff incidents; was aware of the incidents enumerated in Sheppard's complaint; and nevertheless turned a blind eye to the staff misconduct. As with his Eighth Amendment claim, this is less an allegation of direct involvement than of supervisory officials recognizing unconstitutional behavior in their staff members and then facilitating or condoning that behavior. Sheppard does not allege the factual details surrounding this behavior, but he does not need to. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (“[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations.’”). Though he faces an uphill battle in proving that these officials knew of the constitutional deprivations he alleges and condoned those deprivations, he has met the low bar at the screening stage and may proceed against these defendants.

Again, Sheppard should be aware of the difficult burden he will face going forward on his First Amendment retaliation claims. A plaintiff may neither prove his claims with the allegations in his complaint alone, *Sparing v. Village of Olympia Fields*, 266 F.3d 684, 692

(7th Cir. 2001), nor with his personal beliefs, *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). Rather, Sheppard will need to come forward with admissible evidence indicating some causal connection between his First Amendment activity and the allegedly retaliatory actions the various defendants took. The timing of the events will likely not be enough by themselves, since even when the exercise of the right and the adverse action occur close in time, it is rarely enough to prove an unlawful motive without additional evidence. *Sauzek v. Exxon Coal USA, Inc.*, 202 F.3d 913, 918 (7th Cir. 2000) ("The mere fact that one event preceded another does nothing to prove that the first event caused the second.").

IV. Preliminary Injunction/Retaliation

Sheppard also seeks a preliminary injunction requiring the administration at CCI to give him consistent time for the use of the legal library. (Dkt. #10.) His motion does not comply with this Court's Procedure to be Followed on Motions for Injunctive Relief, a copy of which is being provided to Sheppard with this Order. Accordingly, his motion will be denied without prejudice to his re-filing in accordance to these procedures.

More importantly, his claim for library time falls outside of the scope of his claims in this lawsuit, suggesting that another lawsuit will need to be filed before the issue is properly presented to this court. Additionally, Sheppard should also be aware that a preliminary injunction is "an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Roland Mach. Co. v. Dresser Indus.*, 749 F.2d 380, 389 (7th Cir. 1984). To prevail on any later motion for a preliminary injunction, plaintiff Sheppard must show (1) a likelihood of success on the merits of his case, (2) a lack of an adequate remedy

at law, and (3) an irreparable harm that will result if the injunction is not granted. *Lambert v. Buss*, 498 F.3d 446, 451 (7th Cir. 2007). If he meets the first three requirements, then the court will balance the relative harms that could be caused to either party. *Id.* Should Sheppard choose to renew his motion for a preliminary injunction, he should keep these requirements in mind, as the court will not grant such extraordinary relief absent an adequate showing of all these requirements.

V. Emergency Appointment of Counsel

Finally, Sheppard asks the court as part of his complaint to appoint counsel for him solely in order to preserve inmate witness testimony. Sheppard alleges that he has evidence that staff have threatened to retaliate against an inmate who has assisted him thus far with his case and asks for counsel to provide further assistance.

First, Sheppard 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 Sheppard, it can attempt to recruit a volunteer. The court will only take this step if it determines that Sheppard’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, however, 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. Sheppard has not indicated that he has attempted such a search 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, Sheppard 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.

Once Sheppard has taken the initial step of seeking counsel on his own, as required by *Jackson*, he may ask the court to reconsider this decision. If he does so, 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.

IT IS ORDERED that:

1. Plaintiff Charles Sheppard is GRANTED leave to proceed on the following claims:

- a. His Eighth Amendment deliberate indifference claims against defendants Walker, Archer, Bredemann, Goldsmith, Nickel, and Meisner;
 - b. His First Amendment retaliation claim for the conduct report and punishment he received as a result of his suicidal thoughts against Walker, Bredemann, Nickel, Ziegler, Morgan, and Meisner;
 - c. His First Amendment retaliation claim for the conduct report and punishment he received as a result of his informal grievance letter against Ziegler, Morgan, Meisner, Casiana, Franson and Lane.
2. Plaintiff is DENIED leave to proceed on all other claims.
 3. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have forty (40) days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
 4. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
 5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
 6. Plaintiff's motion for emergency appointment of counsel is DENIED without prejudice.
 7. Plaintiff's motion for a preliminary injunction (dkt. #10) is DENIED without prejudice.

Entered this 14th day of March, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge