

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

HARRISON FRANKLIN,

Plaintiff,

ORDER

v.

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,
PAULINE BELGADO, SARGENT SIEDOSCHLAG,
PETER HUIBREGTSE, LINDA HODDY-TRIPP,
MS. BLACKBOURNE, JIM WEGNER, SARGENT
LIND, CAPTAIN JOHN P. GRAHL, SARGENT
DAN MEEHAN, CO II MIKE GLAMAN, and
NURSE HOLLY MEIER,

Defendants.

Plaintiff Harrison Franklin has filed two motions in this case: a motion for appointment of counsel and a motion for a “continuance.” In considering whether counsel should be appointed, I first must determine whether plaintiff made reasonable efforts to retain counsel and was unsuccessful or whether he was precluded effectively from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has provided the names and addresses of several lawyers that he has requested to represent him. Therefore, I conclude that plaintiff has satisfied the requirements of Jackson. I must also

determine whether plaintiff is competent to represent himself given the complexity of the case, and if he is not, whether the presence of counsel would make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995) (citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)).

Plaintiff sets out several reasons why the court should grant his motion to appoint counsel: (1) he is suffering from “severe depression” and he cannot “completely understand or concentrate on the proceedings” because of medication that he is taking; (2) defendants have taken “several documents, exhibits, motions, briefs and legal research” from him; (3) the case presents “factual complexities deserving of professional counsel”; (4) without counsel, plaintiff will be unable to obtain “classified information” from defendants; (5) defendant is not educated and has no legal training.

I am not persuaded that counsel is necessary at this time. Although I do not doubt that plaintiff suffers from depression, he has provided no evidence that it is so severe that he cannot prosecute this case on his own. Thus far, plaintiff has shown that he is capable of obtaining the assistance he needs to file a complaint, file motions and present his arguments. Furthermore, plaintiff is not entitled to appointed counsel simply because he has not had any legal training. Most pro se litigants are similarly disadvantaged. In this court, persons representing themselves are not penalized for failing to know the rules applying to their cases. In most instances, if proper procedure is not followed, the pro se litigant is

directed to the relevant rule and given a second opportunity to comply.

I also do not believe that this case is particularly complex. Although plaintiff was granted leave to proceed on several claims, none of them involves complex factual scenarios. In addition, defendants have filed a motion to dismiss many of plaintiff's claims for failure to exhaust administrative remedies. If this motion is granted, the case will be further simplified.

With regard to the documents plaintiff alleges that defendants have taken from him, plaintiff has failed to show that he needs a lawyer to keep his papers safe. He has not identified what documents have been taken from him or explained how they relate to his lawsuit. Similarly, plaintiff has not identified what "classified information" he needs from defendants that they have refused to turn over. If defendants refuse to produce discoverable documents or information, plaintiff may file a motion to compel, at which time the court can decide whether plaintiff requires a particular document and, if so, what the proper course of action should be. Thus far, however, plaintiff has not identified *any* documents that defendants have refused to produce.

Plaintiff also asks the court to stay the proceedings until the court has ruled on his motion to appoint counsel and to permit time to conduct discovery in response to defendants' motion to dismiss. In his motion, plaintiff writes: "Regardless of the decision rendered on plaintiff's motion for counsel, discovery will be needed to answer defendant's

motion to dismiss.” First, I note that the only documents plaintiff will need in response to defendants’ motion to dismiss for failure to exhaust administrative remedies are the inmate complaints that he filed and the decisions by each reviewing authority who considered his grievance. Plaintiff should have copies of each of these documents; if he does not, he can request copies from the appropriate prison official. Second, plaintiff is mistaken if he believes that only a lawyer can make a discovery request. Plaintiff is allowed to conduct discovery on his own; he should not be waiting to conduct discovery until counsel is appointed for him. However, I will grant plaintiff an extra week to respond to defendants’ motion to dismiss so that he may collect the necessary documents.

ORDER

IT IS ORDERED that

1. Plaintiff Harrison Franklin’s motion for appointment of counsel is DENIED.
2. Plaintiff’s motion to stay the proceedings is DENIED. However, plaintiff may have until April 1, 2003, in which to respond to defendants’ motion to dismiss. Defendants

may have until April 10, 2003, in which to reply.

Entered this 13th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge