IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JERRY MEANS,

Plaintiff, ORDER

v. 02-C-0695-C

DR. C. CULLEN, Psychologist,
DR. TWILA HAGAN, Head Psychologist,

Defendants.

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Plaintiff is proceeding pro se in this case brought pursuant to 42 U.S.C. § 1983, on a claim that between April 11 and May 19, 2002, he wrote to unnamed psychologists in an attempt to obtain mental health care for his bipolar disorder and anxiety problems and his requests for help were ignored. Although plaintiff did not allege in his complaint who refused him treatment, I allowed plaintiff to proceed against defendants Cullen and Hagan, because they are the only two psychologists named in the complaint. Defendants have answered the complaint and a telephone preliminary pretrial conference has been scheduled for April 28, 2003, before United States Magistrate Judge Stephen Crocker.

Presently before the court is plaintiff's fourth motion for appointment of counsel. His

first three motions were denied as premature. This time I am denying plaintiff's motion because I am not persuaded that this case is too complicated for him to handle, even accepting that he has a mental disorder, or that a lawyer will make a difference in the outcome of the lawsuit.

The determination whether to appoint counsel is to be made by considering whether the 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 asserts that up to this point, he has had the help of another inmate in pursuing his complaint. Nevertheless, from plaintiff's present motion, it appears that plaintiff is competent to read, express his thoughts in writing and follow directions generally. As the case progresses, the parties will be provided with a schedule for obtaining evidence and making motions that may dispose of the case before trial. During the preliminary pretrial conference, plaintiff will be able to ask the magistrate judge specific questions about procedure, if he has them. He will receive instructions from this court about how to oppose a motion for summary judgment, if such a motion were to be filed.

The law governing plaintiff's case is settled. To prevail on his claim, plaintiff must prove that defendants were deliberately indifferent to his serious mental health care needs

or that he was suffering such significant mental torment that the failure to treat him was uncivilized. See Estelle v. Gamble, 429 U.S. 97 (1976); Cooper v. Casey, 97 F.3d 914, 916 (7th Cir. 1996). Because plaintiff does not need to find case law to support his claim, he can concentrate on gathering evidence. To prove his case against defendants Cullen and Hagan, plaintiff is going to have to prove that between April 11 and May 19, 2002, he was suffering a serious mental health condition that could have been treated easily, that defendants Cullen and Hagan knew of his condition, and that the decision of Cullen and Hagan not to treat plaintiff was malicious or sadistic for the purpose of causing plaintiff harm or with deliberate indifference to his serious mental health needs. Plaintiff is capable of obtaining his own medical records, which may show how serious his mental health condition was prior to April 11 and, assuming plaintiff's allegations are true, that he received no mental health treatment between April 11 and May 19, 2002. The biggest difficulty plaintiff will have is proving that he suffered an injury as a result of the lack of treatment. For this, plaintiff will need expert testimony.

Because the cost of medical experts is so great, most individuals suing for medical or mental health mistreatment of the serious nature required to state a claim under the Eighth Amendment seek out a lawyer who would be willing to take the case on a contingent fee basis. This means that if the plaintiff wins, the cost of the expert will be recovered and the lawyer will be paid for his or her time and expenses in pursuing the case. The contingent fee

system serves as a reality check for litigants. If no lawyer with a background in medical or mental health mistreatment cases is willing to take plaintiff's case, chances are high that the case is one the lawyers have assessed either as not likely to succeed or as not likely to result in a damage award large enough to recoup the expense of prosecuting the case.

Plaintiff has asked three lawyers to take his case and those lawyers have declined to do so. He is free to continue with that process. If he wishes, he may contact the Wisconsin State Bar Lawyer Referral and Information Service at P.O. Box 7158, Madison, Wisconsin, 53707, 1-800-362-8096, to obtain the names and phone numbers or addresses of lawyers whose practices include medical malpractice or Eighth Amendment cases. However, because I believe it to be inappropriate for a court to appoint a lawyer to take a case such as this without regard for his or her assessment of the risks of incurring the expense of the lawsuit against the probability of succeeding on the merits of the case, I will deny plaintiff's motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff's third motion for appointment of counsel is DENIED.

Entered this 22nd day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge