

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

TITUS HENDERSON,

Plaintiff,

v.

DAVID BELFUEL, in his individual and official capacity, JEFFREY ENDICOTT, in his individual and official capacity, SUZANNE DEHAAN, in her individual and official capacity, SCOTT ECKSTEIN, in his individual capacity, JANELLE PASKE, in her individual capacity, DAVID TARR, in his individual capacity, SANDRA HAUTUMAKI, in her individual capacity, CINDY O'DONNELL, in her official capacity and JOHN DOES,

Defendants.

ORDER

03-C-729-C

In this case, plaintiff was granted leave to proceed on claims under the Fourth and Eighth Amendments that defendants Tarr, Belfuel, Endicott, Dehann, Echkstein and three unnamed officers gratuitously subjected him to pain by taking a blood sample that was not needed for any legitimate penological or medical purpose. In addition, plaintiff was allowed to proceed on his claim under the First Amendment that defendants Tarr, Endicott, Dehaan, Paske, Hautumaki and O'Donnell retaliated against him for filing a complaint about the

forced blood extraction by prolonging plaintiff's stay in temporary lockup. Now plaintiff has moved the court for appointment of counsel to represent him. The motion will be denied.

On May 4, 2004, I denied plaintiff's request for appointed counsel in another of his cases, Henderson v. Sebastian, 04-C-39-C. In denying plaintiff's motion, I found that plaintiff was capable of prosecuting the action on his own, given the moderate complexity of the case. Plaintiff's motion in this case will be denied for the same reason.

Before I can consider a motion for appointment of counsel, however, I must insure that plaintiff made reasonable efforts to find counsel on his own. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has done that. He has submitted letters from three lawyers who have declined to represent him on his claims in this case.

Next, I must consider whether plaintiff is competent to represent himself given the complexity of this 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's Eighth and Fourth Amendment claims about the blood extraction and his First Amendment retaliation claim involving one incident of alleged wrongdoing are not complex. The law relating to these cases was explained in the order allowing plaintiff to proceed. In addition, plaintiff possesses personal knowledge of the facts giving rise to his claims. Even if he has to engage in extensive discovery in an attempt to unearth direct evidence of wrongdoing, I believe

plaintiff is capable of conducting this discovery and presenting his evidence on a motion for summary judgment or at trial. Plaintiff has advised the court that he has a high school education. That education is evident in plaintiff's filings in both of his cases to date. His writing is clear and concise and he has exhibited the ability to construct motions and follow directives. Having a lawyer to help him tell his version of the facts is both unnecessary and unlikely to make a difference in the outcome of this lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for the appointment of counsel to represent him in this case is DENIED.

Entered this 13th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge