

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

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JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;  
MICHAEL CATALANO;  
PRISON HEALTH SERVICES, INC.;  
PAM BARTELS;  
JOHN W. KUSSMAUL; D. ESSER;  
FUERSTENBURG; JANTZEN;  
TIM F. HAINES; SHIRLEY OLSON;  
KERRY MELBY; BECKY MANNING;  
and GERALD A. BERGE,

Defendants.

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ORDER

04-C-116-C

Plaintiff Jonathan P. Cole has moved the court for appointment of counsel to represent him in this action. The motion will be denied.

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). The record reflects that plaintiff has contacted a number of lawyers

in an effort to convince them to take his case and that none has agreed to represent him. This is sufficient to make the showing required by Jackson.

Second, I must 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 Cole is an able litigant in federal court proceedings. He has been a plaintiff in several cases filed in this court and in the Eastern District of Wisconsin. In this lawsuit, plaintiff raised multiple constitutional claims not only on his own behalf, but on behalf of other inmates. He appears to be highly familiar with the law relating to prison litigation, as well as the technical aspects of prosecuting a lawsuit, such as conducting discovery, collecting admissible evidence, and following court procedures. According to plaintiff, his present difficulty in prosecuting this lawsuit is financial. He has run out of legal loan money and surmises that without counsel to help him foot the bill, he will be unable to defend against defendants' motion to dismiss certain of his claims for his failure to exhaust his administrative remedies.

Despite his protestations about lacking funds with which to oppose defendants' motion to dismiss, I note that plaintiff's motion for appointment of counsel is made up of 19 pages of material, 14 of which are pages filled on both sides with single-spaced

handwritten arguments. Plaintiff does not explain why he could not have marshaled these same resources to oppose defendants' motion to dismiss. Nevertheless, I will accept plaintiff's assertion that he has depleted his \$200 legal loan allowance and that prison officials are refusing to grant him an extension of the legal loan amount so that he can oppose defendants' motion to dismiss in the manner he believes is necessary to defeat the motion.

Unfortunately, plaintiff has no constitutional entitlement to a subsidy so that he can prosecute this lawsuit. Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003). That he has chosen to litigate as many lawsuits as he has, without anticipating and preparing for the inevitable costs of suing several people for numerous alleged constitutional wrongs, does not justify appointing him counsel. Plaintiff will have to do the best he can with the limited resources he has.

I conclude that plaintiff possesses the intellectual and technical skills to represent himself in this lawsuit, even though his decision to include in one lawsuit multiple claims of constitutional wrongdoing render prosecution of the case more procedurally complex than lawsuits more tightly focused. Therefore, it is not necessary to decide whether having appointed counsel would make a difference in the outcome of his case.

ORDER

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

Entered this 25th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge