

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

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JOEL FLAKES,

Plaintiff,

v.

MATTHEW J. FRANK,  
CORRECTIONS CORPORATION OF AMERICA,  
JANE SONDALE and  
DANIEL BENIK,

Defendants.

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ORDER

04-C-189-C

In an order entered in this case on June 17, 2004, I granted plaintiff's motion for the appointment of counsel and stayed all proceedings until I could locate a lawyer willing to represent plaintiff. Unfortunately, I must now lift the stay and require plaintiff to represent himself.

Plaintiff is proceeding in this action on the following claims:

1) that defendant Corrections Corporation of America's policy of denying him a cane, double mattresses and a chair and its refusal to arrange for hip replacement surgery deprived plaintiff of his Eighth Amendment rights;

2) that defendant Jane Sondalle retaliated against plaintiff for exercising his First Amendment right to file a grievance by directing staff to harass plaintiff and refuse him assistance in moving about the prison and by arranging for him to have to go to the Health Services unit to shower;

3) that defendant Sondalle discriminated against plaintiff because of his race by not assigning him an aide after his arrival at Stanley Correctional Institution;

4) that defendant Sgt. Daken retaliated against plaintiff for exercising his First Amendment right to file a grievance by refusing to retrieve a shower chair for plaintiff;

5) that unknown Stanley Correctional Institution employees retaliated against plaintiff for exercising his First Amendment right to file grievances by denying him job opportunities (plaintiff is proceeding against defendant Benik for the sole purpose of conducting discovery to learn the names of the individuals personally involved in these alleged retaliatory acts);

6) that an unknown employee at the Columbia Correctional Institution deliberately refused to arrange for plaintiff to have hip surgery despite Dr. Daley's approval of the surgery (plaintiff is proceeding against defendant Frank for the purpose of discovering who this individual is); and

7) that defendant Frank violated plaintiff's rights under the Americans with Disabilities Act of 1990 by a) allowing him to be confined to a handicap cell at the Stanley

Correctional Institution that lacked the amenities of a regular cell; b) failing to arrange for recreational activities and programming for handicapped individuals; and c) failing to arrange for plaintiff to receive the services of an aide while he was confined at the Oshkosh Correctional Institution.

For more than five months, this court has attempted to find a lawyer who would be willing and able to represent plaintiff on these claims. After trying for three months to find a lawyer in this district with no success, I abandoned my efforts and requested assistance from the office of the Circuit Executive for the Court of Appeals for the Seventh Circuit. Despite the circuit's assistance, no lawyer who was approached about taking the case has agreed to represent plaintiff, even though I have made it known to potential counsel that I would be willing to sever plaintiff's claims so as to allow counsel to choose from among the claims that counsel would be willing to prosecute on plaintiff's behalf and that counsel would prefer not to prosecute.

Having made every effort to find a lawyer for plaintiff and having failed in those efforts, I have no recourse but to require plaintiff to prosecute his claims on his own. In the order granting plaintiff's motion for appointed counsel, I noted that plaintiff has osteoarthritis in his hips, which causes him substantial pain. I noted also that plaintiff's ADA claim in the prison context raised novel legal issues that may be more difficult to

litigate than plaintiff's other claims, which have for years been routinely litigated by prisoners without counsel. Plaintiff's physical impairment may make it more difficult for him to spend steady periods of time researching the law or, for example, responding to a motion for summary judgment. Therefore, I will ask the magistrate judge to take plaintiff's condition into account when he schedules the various deadlines for moving this case to resolution.

#### ORDER

IT IS ORDERED that the stay previously imposed in this case is LIFTED. The clerk of court is requested to schedule this case promptly for a scheduling conference before the United States Magistrate Judge. The magistrate judge is requested to establish such extended deadlines as are necessary to accommodate plaintiff's condition.

Entered this 29th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge