IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LUIS A. RAMIREZ,

ORDER

Plaintiff,

04-C-335-C

v.

GARY R. McCAUGHTRY, MATTHEW FRANK, CURT JANSEN, STEVEN SCHUELER, MARC CLEMENTS and STEVEN CASPERSON,

Defendants.

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On August 23, 2004, I granted plaintiff leave to proceed in forma pauperis on his claims that defendants violated his constitutional rights when they subjected him to constant illumination in his cell and extreme heat and cold and when they prohibited him from having pictures and publications in segregation. In the same order, I denied plaintiff's motion for the appointment of counsel to represent him because he had not made a showing that he had made reasonable efforts to find a lawyer on his own and had been unsuccessful. Now plaintiff has filed a second motion for appointment of counsel that is supported by the prerequisite showing that he has contacted at least three lawyers who have declined to

represent him.

In deciding whether appointment of counsel is necessary in a civil action, a court must consider whether a pro se 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)).

In support of his motion, plaintiff Ramirez states that he is inexperienced in the law and that "conflicting evidence implicating the need for cross-examination will be very important in this case." Plaintiff states also that he has "no ability to investigate the facts," that the issues are complex, that he does not have access to a "proper law library," and that no one with knowledge of the law is assisting him.

As I noted above, plaintiff is proceeding in this case on claims that defendants violated his Eighth Amendment rights when they subjected him to constant illumination and extreme heat and cold and his First Amendment rights when they prohibited him from having pictures and publications while he was in segregation. Contrary to plaintiff's assertion, these are not complicated claims. In the August 23, 2004 order, I explained the legal standards governing each claim. Although plaintiff's restriction on meaningful legal research and his inability to obtain the assistance of someone at the prison who is familiar with federal court practice may be disconcerting to plaintiff, he should be aware that as a pro

se plaintiff, his primary responsibility is to relate to the court the facts of his case. It is the role of the court to determine the relevant law and apply it to the facts.

Plaintiff states that he has no ability to investigate the facts, but he does not explain why this is so. He has alleged that constant illumination and extreme hot and cold temperatures have caused him to suffer physical or mental health effects that constitute cruel and unusual punishment. Certainly, plaintiff can gain access to his own medical and mental health records and he has suggested no reason why he cannot request production of documents or draft interrogatories directed to the defendants to learn whether any records exist that would reveal the wattage of the light bulbs in his cell or the cell temperatures on dates he believes they were extreme. With respect to plaintiff's First Amendment claim, plaintiff should have personal knowledge of the pictures, magazines, newspapers or personal books that he wanted to have with him in segregation but that were denied. As I stated in the August 23 order, it will be defendants' responsibility to make a showing (1) that a valid, rational connection exists between the regulation limiting these items in the segregation unit and a legitimate governmental interest; (2) plaintiff had available alternative means of exercising his First Amendment rights; (3) accommodation of the asserted right would have negative effects on guards, inmates or prison resources; and (4) there were no obvious, easy alternatives at a minimal cost. I am not convinced that plaintiff is incompetent to gather the facts required to prove his claims or that the evidence will be conflicting and implicate

the need for cross-examination.

Finally, I am not convinced that the existence of appointed counsel would make a difference to the outcome of this action. As I already have advised plaintiff, in order to succeed on his cell illumination claim, he will have to prove that he was subjected to lighting greater than a 5-watt bulb, see e.g., Pozo v. Hompe, 02-C-12-C (W.D. Wis. Apr. 8, 2003), and to succeed on his extreme cell temperatures claim, he will have to prove what the extreme temperatures were and that as a result of the extreme heat or cold he suffered deleterious effects beyond mere discomfort. If such evidence exists, plaintiff is just as capable of obtaining it as a lawyer would be. In addition, plaintiff has not suggested how a lawyer would be more capable than he in identifying the pictures, magazines, newspapers or personal books that he was denied while he was in segregation, or in responding to defendants' explanation when it is put into evidence why they believe that the restriction

elates to a legitimate penological interest.

ORDER

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

Entered this 15th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge