

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

JAMES G. DUDGEON,

Petitioner,

v.

MATTHEW J. FRANK, DICK VERHAGEN,
JANE DIER-ZIMMEL, ROY BOUTAN,
TODD JOHNSON and WAYNE MIXDORF,

Respondents.

ORDER

04-C-075-C

In an order entered in this case on April 15, 2004, I gave petitioner James Dudgeon until May 5, 2004, in which to inform the court whether it has misconstrued his complaint and its attachments to show that he failed to exhaust his administrative remedies before bringing this action in federal court. Now plaintiff has filed a motion for the appointment of counsel, which will be denied.

It is a simple question whether petitioner observed the procedural requirements of the administrative grievance system in challenging the claim he raises in this lawsuit. The administrative remedies forms attached to petitioner's complaint show that his appeals were rejected because he failed to file his inmate complaint within fourteen days of the

disciplinary hearing giving rise to his claim in this lawsuit. It is a procedural formality to give petitioner an opportunity to say that these forms do not accurately reflect what happened with his administrative grievance. However, unless petitioner discovers, for example, that he has connected the wrong forms to his complaint and points that error out, it appears certain that his case will be dismissed for his failure to exhaust his administrative remedies.

Appointment of counsel is not appropriate if having a lawyer would make no difference in the outcome of the lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). In this case, the presence of a lawyer will have no effect on petitioner's ability to prove exhaustion of his administrative remedies. The record will speak for itself. Accordingly, petitioner's motion for appointment of counsel will be denied.

ORDER

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

Entered this 22nd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge