IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PAUL HENDLER,

ORDER

Plaintiff,

04-C-915-C

v.

GARY McCAUGHTRY and
MARK CLEMMONS,

Respondents.

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In an order dated February 1, 2005, I allowed plaintiff to proceed on a claim that defendants read papers marked for his defense attorney in violation of his First Amendment rights. In the same order, I denied plaintiff's motion for appointment of counsel for two reasons. First, he had not shown that he made a reasonable effort to retain counsel and was unsuccessful or that he was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Second, I noted that it was simply too early in this lawsuit to assess 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)). The next day, on February 2, 2005, plaintiff

wrote a letter reiterating his request for appointed counsel. Attached to his letter are copies of letters from several lawyers who declined to represent him. Although plaintiff's February 2 letter appears to have crossed in the mail with the February 1 order denying his original request for appointed counsel, I will construe the letter as a second motion for appointment of counsel. This motion will also be denied.

Plaintiff appears to have satisfied the requirement that he make reasonable efforts to find a lawyer on his own. Nevertheless, I conclude that it is still far too early in this lawsuit to determine whether plaintiff is competent to represent himself given the complexity of the issue in the lawsuit. In addition, I conclude that plaintiff has not made a showing that he qualifies financially for appointed counsel. Plaintiff paid the $150 fee for filing his lawsuit, and only persons who qualify to proceed in forma pauperis are eligible to be considered for appointed counsel. Therefore, if plaintiff intends to renew his request for appointment of counsel at some later stage of this lawsuit, he will have to submit a current six-month trust fund account statement with his motion so that I can determine whether he is indigent.

Also, plaintiff has submitted a letter dated February 4, 2005, in which he states that he believes an injunction is warranted because he has "been witness to staff hindering cases." I understand plaintiff to be suggesting that defendants may attempt to retaliate against him because he filed this lawsuit and that he is therefore in need of an order enjoining such retaliation. I construe plaintiff's February 4 letter as a motion for a preliminary injunction

and will deny it, because plaintiff's claim of retaliation is not properly raised in the context of this case.

First, plaintiff appears to be speculating that defendants might retaliate against him for exercising his constitutional right to file a lawsuit. An injunction cannot be obtained on the basis of pure speculation. In any event, even if plaintiff could prove that defendants had already engaged in retaliation, I would require the claim to be presented in a lawsuit separate from this one because of the complication of issues that can result from an accumulation of claims in one action. There is only one exception to this policy, and that exception would occur if a plaintiff were able to show that he is being directly, physically impaired in his ability to prosecute his lawsuit. In this case, plaintiff has made no showing that he is being subjected to retaliation that directly and physically impairs his communication with the court.

ORDER

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

Further, IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Entered this 22nd day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge