

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

DONALD BUFORD,

Plaintiff,

v.

JIM SUTTEN, TIM DOUMA
and PAT SIEDSCHLAG,

Defendants.

ORDER

04-C-959-C

Plaintiff is proceeding in forma pauperis and pro se in this action on his claims that 1) defendant Jim Suttten failed to protect him from assault and forced him to share a cell with an inmate who was known to be violent after relieving a white inmate from sharing the cell; 2) defendant Tim Douma denied him exercise; and 3) defendant Pat Siedschlag withheld treatment for genital warts. On April 22, 2005, defendants moved to dismiss these claims on the ground that plaintiff had failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e. On April 29, 2005, plaintiff sent the court two copies of his response to the motion. One copy was addressed to Clerk of Court Theresa Owens. The other copy was addressed to the court. Neither copy shows that plaintiff sent a copy to Assistant Attorney General John Glinski, who is counsel for the defendants. Also, on April 28, 2005, plaintiff filed a second motion for appointment of counsel. There is no indication

on this motion that plaintiff sent a copy to Mr. Glinski.

When I granted plaintiff leave to proceed in forma pauperis on the claims listed above, I told him that for the remainder of this lawsuit, he was to send a copy of every paper or document he files with the court to the lawyer for the defendants and to show on the court's copy that he had done so. Plaintiff appears to have overlooked these important requirements. Instead, he has filed two copies of his submissions with this court. This is unnecessary. One copy to the court is ample.

On this one occasion, I will forward to Mr. Glinski the extra copy of plaintiff's submission in opposition to defendants' motion, and a copy of plaintiff's second motion for appointment of counsel. In the future, however, I will not consider any document, letter or other paper plaintiff files that does not show that plaintiff complied with the service requirements about which he has been told.

With respect to plaintiff's second motion for appointment of counsel, the motion will be denied. Although plaintiff has shown that he contacted three lawyers who declined to represent him in this case, a showing he was required to make before I could consider his motion on its merits, Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992), federal district courts are authorized by statute to appoint counsel for an indigent litigant when "exceptional circumstances" justify such an appointment. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir.1993)(quoting with approval Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.1991)). The Seventh Circuit will find such an appointment reasonable where plaintiff's

likely success on the merits would be substantially impaired by an inability to articulate his claims in light of the complexity of the legal issues involved. Id. In other words, the test is, "given the difficulty of the case, [does] the plaintiff appear to be competent to try it himself and, if not, would the presence of counsel [make] a difference in the outcome?" Id. The test is not whether a good lawyer would do a better job than the pro se litigant. Id. at 323; see also Luttrell v. Nickel, 129 F.3d 933, 936 (7th Cir. 1997).

It is a simple question whether petitioner observed the procedural requirements of the administrative grievance system in challenging the claims he raises in this lawsuit. Defendants contend that plaintiff did not file an administrative appeal concerning any issue on which he has been allowed to proceed. In response, plaintiff has submitted administrative remedies forms he believes will show that he has exhausted 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 at 322. In this case, the presence of a lawyer will have no effect on plaintiff's ability to prove exhaustion of his administrative remedies. The record speaks for itself. Accordingly, plaintiff's second motion for appointment of counsel will be denied.

ORDER

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

Entered this 6th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge