

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

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TITUS HENDERSON,

Plaintiff,

v.

MATTHEW FRANK; PETER HUIBREGTSE; BRIAN  
KOOL; TRACEY GERBER; J. STARKY; RUSSELL  
BAUSCH; ROBERT SHANNON; TODD OVERBO;  
and RICHARD SCHNEITER,

Defendants.  
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ORDER

06-C-0012-C

In this lawsuit brought under 42 U.S.C. § 1983, plaintiff Titus Henderson has been allowed to proceed in forma pauperis on several claims of violations of his constitutional rights. The case is presently scheduled for trial on March 26, 2007. Currently before the court is plaintiff's third motion for appointment of counsel, which he filed on March 8, 2007. I denied plaintiff's two prior requests for appointment of counsel because I determined that he is competent to litigate his claims in this case. This motion will also be denied.

There are several reasons why plaintiff's third motion for appointment of counsel will be denied. First, plaintiff's motion arrived on the eve of trial. If I were to grant this

motion and recruit counsel to represent plaintiff, it would require his trial to be postponed indefinitely while counsel was identified, retained and given time to prepare. This would cause unacceptable delay. Next, plaintiff has not identified in this motion any additional, legitimate reason that he requires counsel that would cause me to reconsider my past decisions. Plaintiff argues that he needs a lawyer at trial to assist him with cross-examination (at which he states he is unskilled) and to explain the law to the jury. However, plaintiff has tried a case in this court before, placing him in a better position than most pro se litigants, many of whom find cross-examination challenging. If plaintiff was entitled to a lawyer to assist him because he is unsure of his ability to conduct effective cross-examination, then nearly all pro se litigations would be entitled to counsel. With respect to plaintiff's concern that he needs a lawyer to explain the law to the jury, plaintiff should be aware that the court will provide the jury with instructions regarding the legal elements of plaintiff's claims. Finally, plaintiff maintains that he needs a lawyer because the court denied a motion to compel discovery. These two situations are unrelated. The court's ruling on a discovery motion is not relevant in determining whether plaintiff is able to represent himself or whether a lawyer would make a difference in the outcome of trial.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel to represent him in this case is DENIED.

Entered this 14th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge