

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

ORLANDO LARRY,

Plaintiff,

v.

CHAPLAIN DELL GOETZ,

Defendant.

ORDER

06-C-197-C

In this civil action, plaintiff Orlando Larry is proceeding on a claim that defendant Dell Goetz violated his rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)(1)-(2) when he failed to arrange for Jumah services during plaintiff's detention at the Dane County jail in December 2005 and early 2006. Defendant has moved for summary judgment, contending that he is not employed by Dane County, is a volunteer chaplain and ordained minister who counsels inmates in matters of faith and presides over Protestant services in the jail, but who has no authority to arrange Jumah services at the jail. Now plaintiff has filed a motion for leave to file an amended complaint, a proposed amended complaint, and a second motion for appointment of counsel. I will address the two motions below.

In his motion to amend, plaintiff states that he would like to add Dane County as a defendant, as well as a “Lt. Hook (or John Doe #1) and a “John Doe #2.” From defendant’s proposed findings of fact in support of his motion for summary judgment, it appears that Lt. Hook investigated and responded to plaintiff’s January 13, 2006 grievance concerning his inability to attend Jumah services. It is unclear why plaintiff wants to add two additional John Doe defendants or Dane County, however. His proposed amended complaint sheds no light on the matter. It reads in its entirety as follows:

Wherefore, plaintiff request that the court grant the following relief:

A. Issue a declaratory judgment stating that:

1. Law enforcement officials’ failure to forward plaintiff’s request to the chaplain to have his spiritual needs addressed constituted deliberate indifference and a violation of the first amendment to the United States Constitution.

2. Chaplain Dell’s actions did constitute deliberate indifference and discrimination towards the plaintiff in regards to his religion, and spiritual needs and a violation of the first amendment to the United States Constitution.

B. Award compensatory damages jointly and severally against defendants Goetz, Hook and John Doe #2.

C. Award punitive damages against each defendant in this claim.

Ordinarily, an amended complaint will take the place of the original complaint. That means that a motion to amend should be accompanied by a proposed amended complaint in which the plaintiff names in the caption each person he wants to sue and describes in the body of the complaint what each defendant did or did not do, when they did or did not do

it, and what he wants the court to do about it. It must be clear to the defendants what plaintiff is saying each one did so that each can answer plaintiff's particular grievance against him or her. To help the court understand what changes a plaintiff is making in an amended complaint, it is this court's policy to ask the plaintiff to file a proposed amended complaint that looks just like the original except that plaintiff is to point out any new defendants by highlighting their names in the caption and he is to highlight or circle all the new or modified allegations he has made to the body of the complaint or to his request for relief. If plaintiff wants to delete certain allegations from the original complaint, he should draw a line through those allegations in his proposed amended complaint. If plaintiff does these things, it will allow the court to screen plaintiff's changes quickly and rule more promptly on his motion.

Plaintiff should be aware that the court will not look favorably on a motion to amend his complaint at this late stage to add a John Doe defendant. He was granted leave to proceed on his claims on May 19, 2006, and has had several months to conduct discovery to identify the persons who might have been personally involved in denying him the ability to participate in Jumah services. There is no indication in the record that he has begun this process even now. In any event, his motion to amend will be denied without prejudice to his refiling the motion with a proper proposed amended complaint.

Plaintiff's second motion for appointment of counsel also will be denied. (Plaintiff states in his motion that he filed an earlier motion on July 29, 2006, to which this court has

not yet responded. Plaintiff is mistaken. His July 29 motion was denied without prejudice in an order dated September 19, 2006, a second copy of which is enclosed to plaintiff with a copy of this order.) Despite plaintiff's assertion to the contrary, this case is not complex. The law governing a prisoner's claims of interference with religious freedom under RLUIPA and the First Amendment was explained fully to plaintiff in this court's order of May 18, 2006. Plaintiff filed this and three other lawsuits in this court in 2006. Although he abandoned one of them and was denied leave to proceed on another, he litigated the third through summary judgment and is presently appealing the outcome. He is familiar with this court's procedures and with discovery techniques.

Plaintiff suggests that he needs a lawyer because he might need expert testimony, but this by itself is not a valid reason to appoint counsel. Plaintiff is responsible for paying the costs of expert testimony, even if he is represented by counsel. In any event, he does not explain why he is not capable himself of contacting a Muslim leader to serve as an expert witness in his case. Finally, plaintiff's case concerns the potential denial of his rights for a discrete short period of time in the past. The facts proposed by defendant Goetz suggest that the jail is now providing Jumah services for inmates and that plaintiff has participated in them.

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 Court of Appeals for the Seventh Circuit will find such an appointment reasonable where the 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, however, 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).

I conclude that, given the difficulty of this case, plaintiff is competent to prosecute it himself. Therefore, his motion for appointment of counsel will be denied.

ORDER

IT IS ORDERED that plaintiff's motions to amend his complaint and for

appointment of counsel are DENIED.

Entered this 5th day of January, 2007.

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