

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

COREY PALMS,

Plaintiff,

v.

ORDER

07-C-44-C

SANDRA SITZMAN, Health
Service Manager or Active Supervisor;
and JOHN DOES, Nurses-prison
official, individually and in their
official capacities,

Respondents.

As required by this court's order of April 25, 2007, plaintiff has submitted a proposed amended complaint that is identical to the original complaint except that he has replaced the former John Doe defendants in the caption and the body of the complaint with the names of the persons he has identified as the Does. As I told the parties in the April 25 order, in order to expedite service of the amended complaint on the new defendants, I am asking the United States Marshal to perform that task.

In a cover letter accompanying the proposed amended complaint, plaintiff moves for a second time for the appointment of counsel. Plaintiff also appears to seek reconsideration

of the decision to dismiss defendant Dr. Quisling from this lawsuit. I will address each matter in turn.

In support of the motion for appointment of counsel, plaintiff contends that he is having difficulty obtaining discovery materials from defendant Sitzman. However, plaintiff must utilize the discovery mechanism set out in the federal rules of civil procedure, in particular, Fed. R. Civ. P. 33 and 34, and wait at least 30 days to obtain a response to such requests, before he can complain that defendants are not giving him discovery materials. He cannot ask for discovery using informal methods and expect a timely response or court intervention. Only if a defendant does not respond to a properly served discovery request, may plaintiff may the court to compel discovery pursuant to Fed. R. Civ. P. 37. This was explained to plaintiff in the magistrate judge's preliminary pretrial conference order entered herein on March 22, 2007, a copy of which plaintiff should have in his possession.

In any event, I have determined already that plaintiff's claim that, for approximately nine hours following the extraction of a tooth, he suffered pain needlessly as a result of defendants' deliberate indifference, is so straightforward and plaintiff's abilities so ordinary in relation to most pro se litigants, that his case cannot be considered one of exceptional circumstances warranting appointment of counsel. Therefore, plaintiff's second motion for appointment of counsel will be denied.

As for plaintiff's motion for reconsideration of the dismissal of Dr. Quisling from the

complaint, plaintiff does not suggest that this court erred in construing the allegations of his original complaint or in applying the law. Rather, he suggests he may have new facts to implicate Dr. Quisling in constitutional wrongdoing. The only way to assert new facts against a former defendant is for plaintiff to submit yet another proposed amended complaint in which he alleges the facts he believes supports a claim that Dr. Quisling was deliberately indifferent to his pain. I do not encourage him to do so, however. As plaintiff is well aware from the motion for summary judgment filed by defendant Sitzman (which has been stayed for the time being), defendant has proposed as fact that immediately following the extraction of plaintiff's tooth, Dr. Quisling wrote a prescription for pain medication to be given to plaintiff. She has proposed as well that the medication plaintiff was given at the time his tooth was to be extracted was sufficient to alleviate pain for 6-8 hours. Thus, even if Dr. Quisling failed to write "stat" on the prescription so that it was filled and available to plaintiff immediately, plaintiff will be hard pressed to allege facts in an amended complaint that he believes are likely to have evidentiary support after a reasonable opportunity for further investigation that would implicate Dr. Quisling in an alleged violation of his constitutional rights.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is GRANTED. The amended complaint is accepted as the operative pleading. In future orders and documents filed with the court, the parties should amend the caption to reflect the substitution of defendants Sergeants Morrin and Madey and Correctional Officers Tomac, Gray, Herbrand and Morgan for the Doe defendants.

Further, IT IS ORDERED that plaintiff's second motion for appointment of counsel and his motion for reconsideration of the decision to dismiss Dr. Quisling from this lawsuit are DENIED.

Finally, IT IS ORDERED that

1) the clerk forward to the United States Marshal copies of plaintiff's amended complaint and a copy of this order for service on the newly added defendants; and

2) defendant Sitzman may have ten days from the date of this order in which to file an answer to the amended complaint or advise the court that it intends to stand on

the answer filed in response to plaintiff's original complaint.

Entered this 10th day of May, 2007.

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