

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

LADERIAN T. McGHEE,

Plaintiff,

v.

ANTHONY ASHWORTH and
JASON RHODE,

Defendants.

ORDER

09-cv-722-slc

Plaintiff Laderian McGhee is proceeding on an Eighth Amendment claim that defendant Jason Rhode performed an unlawfully invasive search and on a First Amendment claim that defendant Anthony Ashworth retaliated against plaintiff for filing a grievance against Rhode regarding the search. Trial is set for February 22, 2011.

Now before the court is plaintiff's motion for appointment of counsel. Plaintiff states that he has contacted six lawyers but has not heard back from any of them. In addition, he states that he suffers from epilepsy and is concerned about having seizures during the stressful conditions of a trial.

I will deny plaintiff's motion without prejudice, but I encourage him to renew his motion with more evidence. Plaintiff has submitted a September 1, 2009 letter from a University of Wisconsin neurologist, Dr. Nicholas W. Stanek, MD, stating that plaintiff is epileptic, but that since Dr. Stanek switched his medicine to carbamazepine, plaintiff "has been doing exceptionally well," is "quite happy with his seizure control" and "denies any recurrent seizure." While plaintiff states in his motion that he suffered seizures during a previous trial, he does not state under penalty of perjury that this happened, when these seizures occurred, whether he was using

a less effective medication at that time, or what the effects were, during or after the seizure. With his current medication, it is possible that plaintiff will make it through a stressful trial without a seizure. Further, without intending to underestimate the significance of a seizure during trial by a pro se plaintiff, it may be possible for the court and the parties to implement procedures and accommodations to use if plaintiff suffers a seizure during trial that would protect both sides from prejudice and avoid a mistrial.

If plaintiff renews his motion, he should provide a more detailed history of his epilepsy in an affidavit, including more details about his seizures during his previous trial, what medication (if any) he was taking at that time, what specific concerns he has about his upcoming trial in this court, and whether he is willing to provide a narrow waiver of his patient/physician privilege with Dr. Stanek so that the court could get additional information directly from plaintiff's neurologist .

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 53, is DENIED WITHOUT PREJUDICE.

Entered this 28th day of December, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge