

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

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BOBBIE TORRY,

Plaintiff,

v.

SEAN SALTER,

Defendant.

ORDER

10-cv-378-slc

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Plaintiff Bobbie Torry has been allowed to proceed *in forma pauperis* on his claim that defendant violated plaintiff's due process rights during a disciplinary hearing. The defendant has not yet answered plaintiff's complaint. Now before the court is plaintiff's motion for appointment of counsel.

In deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made a reasonable effort to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. Plaintiff has not met this requirement. Even if he had, his request for an attorney comes too early for the court to grant it.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

Appointment of counsel is appropriate in those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). It is too early to make that determination in this case. In his motion, plaintiff says he needs a lawyer because he has no legal experience, he has only limited access to the law library, and a lawyer would be better able to present evidence at trial. These are not adequate reasons to appoint counsel in this case. Although plaintiff may lack legal knowledge, he is in the same position as most other pro se litigants, almost none of which have legal training of any kind. As this case progresses, plaintiff will improve his knowledge of court procedure. To help him, this court instructs pro se litigants at a preliminary pretrial conference (which will be scheduled after the defendant files his answer) about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff will be provided with a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work.

As for the complexity of plaintiff's case, nothing in the record suggests that it is factually or legally difficult. The law concerning plaintiff's claim was explained to him in this court's February 9, 2011 order. Plaintiff has personal knowledge of the circumstances surrounding his lawsuit. If he does not have copies of documents he needs to prove his claim, he can use discovery to obtain any additional information he needs to make his case.

Finally, there is no way of knowing yet if plaintiff's case will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to

trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial.

In sum, plaintiff has not show that he requires the assistance of counsel at this early stage of the proceedings. Therefore, the motion will be denied without prejudice to plaintiff's renewing his request at a later time.

#### ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 14, is DENIED without prejudice.

Entered this 25<sup>th</sup> day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge