

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

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DARRIN A. GRUENBERG,

Plaintiff,

v.

DUSTIN KINGSLAND and  
STEVEN MUELLER,

Defendants.

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ORDER

11-cv-574-slc

Plaintiff Darrin Gruenberg is proceeding to trial on his claim that defendants used excessive force against him in violation of his right to be free from cruel and unusual punishment under the Eighth Amendment. For the fourth time in this case, plaintiff has moved for appointment of counsel. Plaintiff states that he has no knowledge of trial procedures and that appointing an attorney to represent him will “reasonably allow plaintiff to present his claims on an even playing field.” Additionally, plaintiff argues that defendants’ failure to file a summary judgment motion “heavily implies plaintiff prevailing at trial . . . .”

In each prior instance, the court has denied plaintiff’s motion to appoint counsel, concluding that he has failed to demonstrate that the legal and factual difficulty of this case exceeds his ability to prosecute it. Plaintiff has presented no new factual or legal arguments that persuade me that he is entitled to appointment of counsel under *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). Plaintiff is doing a capable job of representing himself. He has pursued discovery according to the Federal Rules of Civil Procedure and the motions plaintiff has filed cite to proper legal authority. Plaintiff’s submissions have been coherent and well written and they demonstrate that he is able to understand and follow court instructions.

Although plaintiff asserts that he lacks experience in federal court and is not familiar with trial or pretrial procedures, this 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 in advance of trial. Plaintiff was the alleged victim of the excessive force, so he can testify about what he felt, saw and heard based on his firsthand participation in the occurrence. From what I have seen of plaintiff's ability to litigate this case, I believe that he will be able to adequately present his case to a jury. Therefore, plaintiff's motion for appointment of counsel is denied.

I turn next to plaintiff's motion to produce inmate witness Rodney Redmond for trial. Attached to the January 19, 2012 preliminary pretrial conference order was a copy of this court's written Procedures for Calling Witnesses to Trial. Those procedures require that any party who wishes to call an incarcerated witness to testify must serve and file a motion for the issuance of writs of habeas corpus ad testificandum at least four weeks before trial. In addition, the procedure states that before a writ of habeas corpus ad testificandum will issue, the moving party must make a showing that the prospective witness is willing to attend and has actual knowledge of relevant facts.

Although plaintiff's motion was filed well in advance of the January 22, 2013 trial date and indicates that witness Redmond is willing to testify voluntarily, plaintiff's motion is not accompanied by an affidavit that sets forth Redmond's willingness to voluntarily testify on plaintiff's behalf. Therefore, plaintiff's motion for this witness to be brought to trial will be denied without prejudice as premature. Plaintiff is directed to refer to the witness procedure so that he can resubmit his motion and the necessary affidavit within the time allowed.

## ORDER

IT IS ORDERED that

- (1) Plaintiff Darrin Gruenberg's fourth motion for appointment of counsel, dkt. 50, is DENIED without prejudice.

- (2) Plaintiff's motion for witnesses Rodney Redmond to be brought to trial, dkt. 51, is DENIED without prejudice.

Entered this 10<sup>th</sup> day of September, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge