

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAMES H. HIGGASON)
)
 Plaintiff,)
)
 vs.)
)
 HOWARD MORTON, *et al.*,)
)
 Defendants)

CAUSE NO. 3:98-CV-105 RM

OPINION AND ORDER

Plaintiff James Higgason obtained a judgment in this case against Gabriel Tinoco, Brian Thompson, and Mike Lunn, Indiana Department of Correction officials not represented by the Indiana Attorney General. This matter is before the court on Mr. Higgason’s writ of execution pursuant to Fed. R. Civ. P. 69 and request for appointment of counsel. This motion appears to be identical to a motion Mr. Higgason filed in 2006 (docket #252), which this court denied in docket #262.

Mr. Higgason asks the court to order the Governor of Indiana to make a determination as to whether it is in the best interest of the government entity to pay the judgment against these defendants. Mr. Higgason notes that under Indiana law, the payment of such a judgment against state employees is voluntary, with the governor having the discretion to authorize such payments. In its order dealing with Mr. Higgason’s last motion for writ of execution, this court told Mr. Higgason that it will not order the Governor to make such a determination because federal courts may not require state officials to conform their conduct to state law. Pennhurst State School & Hospital v.

Halderman, 465 U.S. 89, 106 (1984). Mr. Higgason should direct his request for payment to the appropriate state officials.

If the governor does not authorize the payment of this judgment, Mr. Higgason asks the court to set a hearing to determine the amount of money the defendants can afford to pay him on a monthly basis toward satisfying the judgment. None of the judgment defendants entered an appearance in this case, or were represented by counsel. In its order dealing with Mr. Higgason's last motion for writ of execution, the court directed the clerk to serve a copy of the judgment of May 31, 2001, to Gabriel Tinoco, the only defendant whose address Mr. Higgason has been able to obtain.

Mr. Higgason may make a demand for payment against Mr. Tinoco. If Mr. Tinoco refuses to pay or does not respond, Mr. Higgason may take further steps to collect his judgment. Mr. Higgason is responsible for locating the defendants other than Mr. Tinoco and providing the court with the information necessary to enforce the judgment. To attach a defendant's wages, the court must have the name and address of the defendant's employer. Without a garnishee defendant, the court cannot enter an order to garnish the employee's wages.

Mr. Higgason says he wants to conduct discovery on the Indiana Department of Correction to determine the last known address of defendants Thompson and Lunn. But he has not filed discovery requests, showing service of process on the defendants. Mr. Higgason does not need leave of court to conduct this discovery, and he may attempt to

conduct this discovery if he complies with the service requirements of Fed. R. Civ. P. 5(b) and 5(d).

Finally, Mr. Higgason states that “contemporaneously herewith, Higgason also files a motion for appointment of counsel for the sole purpose of assisting him with the execution of this judgment.” (Docket #268 at 9). But Mr. Higgason has not filed a motion for appointment of counsel. The court notes that in 2006, the court denied a motion for appointment of counsel filed by Mr. Higgason because he had not demonstrated that he diligently tried to seek counsel on his own. *Jackson v. County of McLean*, 935 F.2d 1070, 1073 (7th Cir. 1992). (Docket #258), and that on March 32, 2008, the court denied a second motion for appointment of counsel for the same reason. If Mr. Higgason can show that he is unable to obtain counsel on his own, he may renew his motion for appointment of counsel.

For the forgoing reason, the court DENIES the plaintiff’s motion for execution of judgment and appointment of counsel. (Docket #268).

SO ORDERED.

DATED: September 22, 2010

 /s/ Robert L. Miller, Jr.
Judge
United States District Court

cc: J. Higgason, Jr.