

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MATTHEW FRANKLIN STEINMETZ,
Plaintiff,

Case No. 1:14-cv-829
Black, J.
Litkovitz, M.J.

vs.

CORRECTIONAL OFFICER
HARRISON, et al.,
Defendants.

**ORDER AND REPORT
AND RECOMMENDATION**

Plaintiff, an inmate at the Southern Ohio Correctional Facility (SOCF), brings this civil rights action under 42 U.S.C. § 1983. Plaintiff alleges violations of his Eighth Amendment rights by several correctional officers at Warren Correctional Institution, where plaintiff was housed prior to his transfer to SOCF. This matter is before the Court on the following motions filed by plaintiff: (1) motion for appointment of counsel and request for preliminary injunction (Doc. 21); (2) motion for extension of time (Doc. 22); (3) motion to appoint counsel (Doc. 23); and (4) motion to compel discovery (Doc. 28).

I. Motions for appointment of counsel (Docs. 21, 23).

In support of his motions for appointment of counsel, plaintiff alleges that he suffers from mental illness; he has restricted access to legal materials due to his security classification at SOCF; and he has had difficulty obtaining documents he needs to pursue this litigation and requires the assistance of counsel to secure these documents. (Docs. 21, 23).

The law does not require the appointment of counsel for indigent plaintiffs in cases such as this, *see Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993), nor has Congress provided funds with which to compensate lawyers who might agree to represent those plaintiffs. The appointment of counsel in a civil proceeding is not a constitutional right and is justified only by exceptional

circumstances. *Id.* at 605-06. *See also Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003).

Moreover, there are not enough lawyers who can absorb the costs of representing persons on a voluntary basis to permit the Court to appoint counsel for all who file cases on their own behalf. The Court makes every effort to appoint counsel in those cases which proceed to trial, and in exceptional circumstances will attempt to appoint counsel at an earlier stage of the litigation. No such circumstances appear in this case. Therefore, plaintiff's motions for appointment of counsel (Docs. 21, 23) are **DENIED**.

II. Request for a preliminary injunction (Doc. 21)

In his motion for appointment of counsel dated January 7, 2015, plaintiff asks the Court to grant him a preliminary injunction. (Doc. 21). Plaintiff alleges he is being retaliated against for filing this lawsuit. Plaintiff alleges he has been moved to another dorm at SOCF and his litigation materials are either in the SOCF vault or have been destroyed. Plaintiff alleges he is being threatened with physical harm, he is periodically denied meals, and the water in his cell is periodically turned off. Plaintiff asks that the Court grant him a preliminary injunction, in addition to appointing him counsel and granting him an extension of time to respond to all motions until his preliminary injunction request is resolved.

In determining whether to issue a preliminary injunction, this Court must balance the following factors:

1. Whether the party seeking the injunction has shown a "strong" likelihood of success on the merits;
2. Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
3. Whether an injunction will cause others to suffer substantial harm; and
4. Whether the public interest would be served by a preliminary injunction.

Leary v. Daeschner, 228 F.3d 729, 736 (6th Cir. 2000). The four factors are not prerequisites, but must be balanced as part of a decision to grant or deny injunctive relief. *Id.* A preliminary injunction is an extraordinary remedy that should only be granted if the movant carries his burden of proving that the circumstances clearly demand it. *Id.* at 739.

Plaintiff has not alleged facts sufficient to warrant a preliminary injunction. Plaintiff has made no attempt to apply the above factors to his situation. In addition, he has not presented any evidence showing a substantial likelihood of success on the merits of his constitutional claims, or that he will suffer irreparable harm absent a preliminary injunction. Plaintiff's allegations in his motion do not constitute evidence supporting injunctive relief. In the absence of any evidence supporting plaintiff's motion, the motion should be denied.

A preliminary injunction is also not warranted here because the purpose of a preliminary injunction--to preserve the status quo until a trial on the merits can be held, *see S. Milk Sales, Inc. v. Martin*, 924 F.2d 98, 102 (6th Cir. 1991)--would not be served. Plaintiff does not seek to preserve the status quo; instead he seeks to affirmatively correct alleged constitutional harms inflicted by SOCF officials who are not defendants in this lawsuit and over whom the Court has no jurisdiction. Accordingly, plaintiff's request for a preliminary injunction (Doc. 21) should be denied.

III. Motion for extension of time (Doc. 22)

Plaintiff filed a motion for a 21-day extension of time on January 20, 2015, alleging that he had recently recovered his legal materials which had been lost in the property room at SOCF. (Doc. 22). Plaintiff states that he needs an extension of time to file a motion seeking documents from defendant that had been lost. Plaintiff does not explain why he requires an extension of time to file a motion and it is not apparent from the record why an extension is necessary. The discovery deadline

time that require a response from plaintiff. Plaintiff's motion for an extension of time (Doc. 22) is therefore **DENIED**.

IV. Motion to compel discovery (Doc. 28)

Plaintiff moves the Court to compel defendants to produce a number of documents for copying and inspection. (Doc. 28). Plaintiff's motion to compel is denied due to plaintiff's failure to show compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

Pursuant to Fed. R. Civ. P. 37, motions to compel discovery must include a certification that extrajudicial attempts have been made to secure responses to discovery requests. Fed. R. Civ. P. 37(a)(1) provides: "On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Such a motion "*must* include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." *Id.* (emphasis added). Similarly, S.D. Ohio Civ. R. 37.1 provides that motions relating to discovery "shall not be filed in this Court, under any provision in Fed. R. Civ. P. 26 or 37 unless counsel have first exhausted among themselves all extrajudicial means for resolving the differences. . . ."

Plaintiff's motion fails to include the necessary certification that plaintiff conferred or attempted to confer with defendants about the instant discovery dispute before filing his motion to compel with the Court. Nor is there any indication from plaintiff's motion that the parties attempted to resolve this dispute before plaintiff filed his motion and sought the Court's intervention. "The obligation of counsel to meet and confer to resolve differences as to discovery disputes is a requirement of the Federal Rules of Civil Procedure as well as of the Local Rules of this Court." *Inhalation Plastics, Inc. v. Medex Cardio-Pulmonary, Inc.*, No. 2:07-cv-116, 2010 WL 1445171, at *2 (S.D. Ohio April 12, 2010). *See also Ross v. Citifinancial, Inc.*, 203 F.R.D. 239, 240 (S.D. Miss.

2001) (“This prerequisite [of a good faith certificate] is not an empty formality. On the contrary, it has been the Court’s experience that obliging attorneys to certify to the Court that they have conferred in good faith results, in a large number of cases, in resolution of discovery disputes by counsel without intervention of the Court.”). Plaintiff’s motion to compel (Doc. 28) is therefore **DENIED** due to plaintiff’s failure to show compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff’s motions to appoint counsel (Docs. 21, 23) are **DENIED**.
2. Plaintiff’s motion for extension of time (Doc. 22) is **DENIED**.
3. Plaintiff’s motion to compel discovery (Doc. 28) is **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s request for a preliminary injunction (Doc. 21) be **DENIED**.

Date: 3/2/15


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).