

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

JAMES IRVING DALE,
MICHAEL EUGENE KOCH,
JAMES EDWARD HAYES,
JOSIA JEREMIAH FUERST,
JEFFERY JACOB-DANIEL
KLINGHAGEN,
UNKNOWN MIKE DURFEE STATE
PRISON INMATES,

Plaintiffs,

vs.

DENNIS KAEMINGK, SOUTH DAKOTA
SECRETARY OF CORRECTIONS; IN
HIS INDIVIDUAL AND OFFICIAL
CAPACITY; ROBERT DOOLEY,
WARDEN AT MDSP AND THE
DIRECTOR OF PRISON OPERATIONS
FOR THE SOUTH DAKOTA DOC; IN
HIS INDIVIDUAL AND OFFICIAL
CAPACITY; JOSHUA KLIMEK, UNIT
MANAGER AT MDSP; IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY;
TAMMY DEJONG, UNIT
COORDINATOR AT MDSP; IN HER
INDIVIDUAL AND OFFICIAL CAPACITY;
SUSAN JACOBS, ASSOCIATE WARDEN
AT MDSP; IN HER INDIVIDUAL AND
OFFICIAL CAPACITY; REBECCA
SCHIEFFER, ASSOCIATE WARDEN
AND THE ADMINISTRATIVE REMEDY
COORDINATOR AT MDSP; IN HER
INDIVIDUAL AND OFFICIAL CAPACITY;
JENNIFER STANWICK, DEPUTY
WARDEN AT MDSP; IN HER
INDIVIDUAL AND OFFICIAL CAPACITY;

4:15-CV-04103-RAL

ORDER DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL BY
PLAINTIFF KOCH BUT ORDERING
DEFENDANTS TO PROVIDE KOCH
WITH MEDICAL RECORDS

DOCKET NOS. 112, 113 & 114

MICHAEL DOYLE, CORRECTIONAL OFFICER, WITH THE RANK MAJOR, AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JEREMY LARSON, CORRECTIONAL OFFICER, WITH THE RANK SERGEANT, AND THE DISCIPLINARY HEARING OFFICER AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; COREY TYLER, CORRECTIONAL OFFICER, WITH THE RANK SERGEANT, AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; MICHAEL MEYER, CORRECTIONAL OFFICER AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; KELLY TJEERDSMA, CORRECTIONAL OFFICER, WITH THE RANK CORPORAL, AT MDSP; IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY; LORI DROTZMAN, GENERAL EDUCATION DIPLOMA TEACHER, WHO ALSO IS IN CHARGE OF THE LAW LIBRARY AT MDSP; IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MICHAEL JOE HANVEY, PHYSICIANS ASSISTANT AND HEALTH CARE PROVIDER AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; ANDRA GATES, NURSING SUPERVISOR AND HEALTH CARE PROVIDER AT MDSP; IN HER INDIVIDUAL AND OFFICIAL CAPACITY; KELLY SWANSON, HEALTH SERVICES SUPERVISOR AT MDSP; IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY; STEPHANIE HAMILTON, NURSE AT MDSP; IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MARY CARPENTER, EMPLOYEE OF THE SOUTH DAKOTA DEPARTMENT OF HEALTH AND ASSISTS WITH INMATE HEALTH CARE DECISIONS FOR INMATES INCARCERATED AT MDSP; IN HER INDIVIDUAL AND OFFICIAL CAPACITY; BARRY SCHROETER,

SUPERVISOR FOR CBM CORRECTIONAL FOOD SERVICES AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JENNIFER BENBOON, DIETITIAN EMPLOYED BY CBM CORRECTIONAL FOOD SERVICES; IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CBM CORRECTIONAL FOOD SERVICES, PRIVATE FOR PROFIT COMPANY CONTRACTED BY THE SOUTH DAKOTA DOC TO PROVIDE MEALS TO INMATES INCARCERATED AT MDSP; DELMAR SONNY WALTERS, ATTORNEY AT LAW CONTRACTED BY THE SOUTH DAKOTA DOC TO PROVIDE LEGAL SERVICES TO INMATES INCARCERATED AT MDSP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN DEPARTMENT OF CORRECTIONS EMPLOYEES, CORRECTIONAL OFFICERS EMPLOYED BY THE SOUTH DAKOTA DOC WHO WORK AT MDSP; UNKNOWN DEPARTMENT OF CORRECTIONS HEALTH SERVICES STAFF, HEALTH SERVICES DEPARTMENT STAFF EMPLOYED BY THE SOUTH DAKOTA DOC TO PROVIDE HEALTH CARE FOR INMATES INCARCERATED AT MDSP; AND UNKNOWN CBM CORRECTIONAL FOOD SERVICES EMPLOYEES, EMPLOYEES OF CBM CORRECTIONAL FOOD SERVICES AT MDSP;

Defendants.

This matter is before the court on a *pro se* complaint pursuant to 42 U.S.C. § 1983 and the Americans With Disabilities Act (ADA) filed by multiple

prison inmates at the Mike Durfee State Prison (MDSP), among them Michael Eugene Koch. Mr. Koch has filed three motions for appointment of counsel. See Docket Nos. 112, 113, and 114. The court denies all three motions as discussed below.

"Indigent civil litigants do not have a constitutional or statutory right to appointed counsel." Edgington v. Missouri Dep't of Corrections, 52 F.3d 777, 780 (8th Cir. 1995). The factors relevant to evaluating a request for appointment of counsel include "whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff's ability to investigate the facts and present his claim." Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996).

This case is not factually complex. Mr. Koch alleges defendants are deliberately indifferent to his serious medical needs, namely treatment of his liver and gall bladder conditions. In support of his motion, Mr. Koch alleges he has only an eighth-grade education, does not know the law, receives no assistance from the law librarian or contract attorney at MDSP, and is ill. Mr. Koch alleges an outside doctor has told him his gall bladder is basically dead and needs to be removed, but surgery cannot be accomplished until his liver is stabilized. Mr. Koch alleges his liver is being affected by Hepatitis C and that he requires treatment with the drug Harvoni® in order to stabilize his liver. He alleges defendants are not giving him the indicated liver treatment, with the

result that his gall bladder cannot be removed. He alleges these conditions cause him pain on a daily basis.

This case is not legally complex. The law regarding plaintiff's Eighth Amendment claim is well-settled, and requires that plaintiff to "prove that he suffered from one or more objectively serious medical needs, and that prison officials actually knew of but deliberately disregarded those needs." Roberson v. Bradshaw, 198 F.3d 645, 647 (8th Cir. 1999). A serious medical need is "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." Camberos v. Branstad, 73 F.3d 174, 176 (8th Cir. 1995) (quotation marks and citation omitted). The law further provides that "[d]eliberate indifference may be demonstrated by prison guards who intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoner's serious medical needs. Mere negligence or medical malpractice, however, are insufficient to rise to a constitutional violation." Dulany v. Carnahan, 132 F.3d 1234, 1239 (8th Cir. 1997) (citing Estelle v. Gamble, 429 U.S. 97, 104-06 (1976)).

Like all individuals untrained in the law, plaintiff may benefit from the assistance of counsel, but the court does not find it necessary to appoint counsel in this matter. The court would not benefit from the assistance of counsel at this point in the proceedings. Plaintiff, although incarcerated, is able to investigate the facts of his claim. It is not clear at the present time

whether there will be conflicting testimony in this case. The legal issues involved do not appear to be legally complex at this point in the proceedings.

However, it does appear Mr. Koch cannot adequately represent himself without access to his own medical records. Accordingly, considering all the relevant factors, as discussed above, and upon the record to date, the court will order defendants to provide Mr. Koch with his own medical records for the last three years, including those records from outside doctors. Based on the foregoing, it is hereby

ORDERED that plaintiff Michael Koch's motions for appointment of counsel [Docket Nos. 112, 113 & 114] are denied without prejudice. It is further

ORDERED that if defendants are served with Mr. Koch's complaint, defendants shall immediately provide to Mr. Koch copies of all of his medical records for the last three years, both records generated by prison medical staff, South Dakota Department of Health employees, and outside medical doctors. If necessary, Mr. Koch must execute health care waivers allowing defendants to request such records and provide such copies to Mr. Koch.

DATED this 3rd day of November, 2016.

BY THE COURT:


VERONICA L. DUFFY
United States Magistrate Judge