

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRANDON B. DREWRY,)
)
 Plaintiff)
)
 v.) 1:14-cv-00392-GZS
)
 CORRECT CARE SOLUTIONS, et al.,)
)
 Defendants)

**ORDER ON MOTION FOR APPOINTMENT OF COUNSEL AND
ENLARGEMENT OF TIME (ECF Nos. 76, 78)**

In this action, Plaintiff, an inmate at the Maine State Prison, contends that Defendants violated his constitutional rights in connection with the treatment of certain medical conditions. (ECF No. 1.) On July 27, 2015, Plaintiff filed a motion for appointment of counsel and for enlargement of time (ECF No. 76), which includes an appendix in which he discussed the shortcomings of the prison law library and related policy governing prisoner access to the library's resources. On August 5, 2015, Plaintiff filed a supplemental motion (ECF No. 78) seeking the same relief and asserting that he had been subjected to certain disciplinary proceedings that have interfered with his access to legal materials.

In support of his motions, Plaintiff asserts that he is unable to remain current in this matter, and in other pending litigation. He specifically notes that his legal papers are in disarray, that he does not have time to reorder his legal papers, that he has no means to store copies of legal documents or drafts on a computer, that he has several cases pending, and that he has insufficient access to the prison law library to manage his litigation caseload.

Plaintiff's request for an enlargement of time to respond to the Correct Care Solutions Defendants' Motion to Dismiss (ECF No. 25) is denied. From the time that Defendants filed their motion in December 2014, Plaintiff has filed numerous pleadings, including several requests to extend the time within which to respond to the motion to dismiss. Initially, on January 20, 2015, the Court granted Plaintiff an extension to February 20 to file a response to the motion. (ECF No. 28.) Subsequent to the grant of the extension, Plaintiff has filed numerous pleadings, including several requests for extension of time. Among the pleadings filed by Plaintiff after the initial request for an extension of time are:

- January 21, 2015 – Renewed Motion for Preliminary Injunction (ECF No. 29).
- February 9, 2015 – Renewed Motion to Amend (ECF No. 33).
- February 11, 2015 - Objection to court order (ECF No. 36).
- February 17, 2015 – Renewed Motion for Appointment of Counsel (ECF No. 41).
- February 17, 2015 – Renewed Motion for Preliminary Injunction (ECF No. 42).
- February 17, 2015 – Motion to Amend Complaint (ECF No. 44).
- March 2, 2015 – Motion to Extend Time to Respond to Motion to Dismiss and Reply to Motion for Preliminary Injunction (ECF No. 47).
- March 3, 2015 – Supplement to Motion to Appoint Counsel (ECF No. 48).
- March 16, 2015 – Renewed Motion to Stay (ECF No. 53).
- March 23, 2015 – Response to Defendant's Motion to Dismiss and Opposition to Plaintiff's Renewed Motion for Preliminary Injunction (ECF No. 54).
- April 3, 2015 – Renewed Motion to Stay Proceedings Regarding Plaintiff's Response to Defendant's Motion to Dismiss and Opposition for Plaintiff's Renewed Motion for Preliminary Injunction (ECF No. 55).

- April 27, 2015 – Motion to Extend Time for Filing Responses to Pending Motions (ECF No. 58).
- May 6, 2015 – Motion to Order Prison Staff to Make Photocopies of Legal Documents (ECF No. 60).
- May 14, 2015 – Notice of Interlocutory Appeal (ECF No. 61).
- June 18, 2015 – Objection to Report and Recommended Decision (ECF No. 67).
- June 25, 2015 – Motion to Supplement Pleading (ECF No. 68).
- July 6, 2015 – Motion to Extend Time to File Response to Motion to Dismiss (ECF No. 71).
- July 8, 2015 – Supplemental Pleading to Complaint (ECF No. 73).
- July 22, 2015 – Motion for Injunctive Relief (ECF No. 75).
- July 27, 2015 – Motion for Appointment of Counsel (ECF NO. 76).
- August 5, 2015 – Motion to Extend Time to Respond to Motion to Dismiss (ECF No. 78).
- August 14, 2015 – Reply to Response to Motion to Appoint Counsel and Motion to Extend Time to Respond to Motion to Dismiss (ECF No. 82).
- August 17, 2015 – Letter regarding Motion to Appoint Counsel and Motion to Extend Time to Respond to Motion to Dismiss (ECF No. 83).
- August 24, 2015 – Motion to Supplement Pleading (ECF No. 84).
- August 31, 2015 – Letter reply to Response to Motion for Injunctive Relief (ECF No. 87).
- September 2, 2015 – Letter in Support of Reply to Response to Motion for Injunctive Relief (ECF No. 88).

As the result of Plaintiff's various filings, the Court enlarged the time within which Plaintiff could file a response to the motion to dismiss to July 24, 2015. (ECF No. 72). Despite the fact that Plaintiff has had more than seven months to respond to the motion to dismiss, Plaintiff seeks a further extension.

Preliminarily, the Court notes that Plaintiff previously filed a pleading entitled “Response to Defendant’s Motion to Dismiss, and Opposition to Plaintiff’s Renewed Motion for Preliminary Injunction.” (ECF No. 54.) In fact, Defendants filed a reply to the response. (ECF No. 56.) While Plaintiff did not address directly Defendants’ substantive arguments, the filing, along with Plaintiff’s subsequent pleadings, demonstrate that Plaintiff objects to the motion to dismiss. Plaintiff, therefore, has not waived objection as contemplated by Fed. R. Civ. P. 7(b).

The Court, however, does not believe that a further extension of time for Plaintiff to file a more formal, substantive response to the motion to dismiss is warranted. As referenced above, Plaintiff has had more than seven months to file the response. Although he has not filed a more formal response, he has filed numerous pleadings in which he made legal arguments in support of certain relief that he requested. Plaintiff’s contention that he was unable to respond to the motion due to a lack of access to legal materials is thus suspect. At some point, Defendants are entitled to a decision on their motion to dismiss.¹ The Court, therefore, denies Plaintiff’s motion for enlargement of time. (ECF Nos. 76, 78.)

While the Court has denied Plaintiff’s request to enlarge the time to respond to the motion to dismiss, the Court concludes that Plaintiff has filed an objection to the motion. In addition, the Court will consider Defendants’ motion based not only on Plaintiff’s complaint, but also on Plaintiff’s subsequent substantive pleadings. *Wall v. Dion*, 257 F. Supp. 2d 316, 318 (D. Me.

¹ See, e.g., *Stewart v. Unknown Bezy*, 473 Fed. App’x 752, 752 – 53 (9th Cir. 2012) (unpublished) (“Prior to filing his response, [the pro se plaintiff] had requested multiple extensions. The district court, noting the challenges that [the plaintiff] faced as an incarcerated pro se litigant, granted many of these extension requests. But a district court need not extend deadlines indefinitely.”); *Johnson v. Delaware*, No. 1:11-cv-01124, 2013 WL 1285114, at *5 (D. Del. Mar. 28, 2013) (“Although the court should provide some lenience to pro se litigants, that allowance is not limitless.”).

2003); *see also Dodson v. Reno*, 125 F.3d 841 (1st Cir. 1997) (per curiam) (“[G]iven that [the plaintiff] apparently argued the retaliation claim below in detail and in light of our obligation to construe *pro se* pleadings liberally, we will treat [the] complaint as amended and address the retaliation claim here.”).

Plaintiff’s requests for appointment of counsel are denied for reasons stated in previous orders. (ECF Nos. 5, 16, 28, 65.)²

CERTIFICATE

Any objections to this Order shall be filed in accordance with Fed. R. Civ. P. 72.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 4th day of September, 2015.

DREWRY v. CORRECT CARE SOLUTIONS et al
Assigned to: JUDGE GEORGE Z. SINGAL
Referred to: MAGISTRATE JUDGE JOHN C.
NIVISON

Date Filed: 10/03/2014
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil

²In a May 28, 2015, Recommended Decision and Order (ECF No. 65), I wrote:

“There is no absolute constitutional right to a free lawyer in a civil case.” *DesRosiers v. Moran*, 949 F.2d 15, 23 (1st Cir. 1991). The *in forma pauperis* statute provides that the Court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). An appointment of counsel under the statute is discretionary, but generally is limited to “exceptional circumstances.” *DesRosiers*, 949 F.2d at 23. “[A] court must examine the total situation, focusing, *inter alia*, on the merits of the case, the complexity of the legal issues, and the litigant’s ability to represent himself.” *Id.* at 24. For example, the presence of “readily mastered facts and straightforward law” would suggest that a request for counsel “should be denied in a civil case.” *Id.* Denial of an indigent plaintiff’s request for counsel is error only if the denial “was likely to result in fundamental unfairness impinging on his due process rights.” *Id.* at 23.

Although claims of deliberate indifference regarding serious medical needs are not insignificant, the law and facts relevant to Plaintiff’s case are sufficiently straightforward that he should be able to represent himself. Indeed, contrary to Plaintiff’s argument, Plaintiff’s filings demonstrate that he can represent himself capably in this action.

Case in other court: First Circuit Court of Appeals, 15-01596
Cause: 42:1983 Prisoner Civil Rights

Rights
Jurisdiction: Federal Question

Plaintiff

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