

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM H. HUDSON,)
)
 Plaintiff,)
)
 v.) Civ. No. 04-162-KAJ
)
 DIANE HERNANDEZ,)
)
 Defendant.)

MEMORANDUM ORDER

The plaintiff, William H. Hudson ("Hudson") filed this civil rights action on March 16, 2004. Currently pending before the Court are Hudson's response to the Court's Order to Show Cause, and his "Motion for Appointment of Counsel." (D.I.s 17,18)

On May 5, 2004, the Court issued a Service Order directing the United States Marshal ("the Marshal") to serve the Complaint. On June 15, 2004, the Court issued a Superceding Service Order, directing the Marshal to serve the Complaint, the Amended Complaint and the Second Amended Complaint. (D.I. 12) On June 21, 2004, the Marshal served the Complaint, along with the amendments on the defendant, Diane Hernandez ("Hernandez"). (D.I. 14) The Marshal filed the completed USM Form 285 on June 29, 2004. Hernandez's answer was due on August 17, 2004. On October 14, 2004, this Court issued an Order to Show Cause to Hudson because Hernandez had not filed an Answer, and no action had been taken in the case. (D.I. 16)

On November 5, 2004, Hudson filed a Motion for Appointment of Counsel stating that "[t]he Court has already approved the plaintiff [sic] application to file the matter in forma pauperis [sic]." (D.I. 18) Hudson, a pro se litigant proceeding in forma pauperis, has no

constitutional or statutory right to appointed counsel. See Ray v. Robinson, 640 F.2d 474, 477 (3d Cir. 1981). It is within this Court's discretion, however, to seek representation by counsel for Hudson, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [Hudson] resulting from [Hudson's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984); accord Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993)(representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff's claim has arguable merit in fact and law). Here, Hudson alleges that Hernandez violated his constitutional rights by failing to provide him with medical treatment for an injury to his hand, and by failing to provide him with high blood pressure medication. (D.I.s 1, 6 and 11) Having reviewed Hudson's allegations, the Court finds that they are not of such a complex nature that representation by counsel is warranted at this time. The various papers and pleadings submitted by Hudson reflect an ability to coherently present his arguments regarding the merits of his Complaint.

On November 5, 2004, Hudson also filed a response to the Order to Show Cause. Although pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,'" Estelle v. Gamble, 429 U.S. 97, 106 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)), the Court must hold the pro se litigant to the same procedural requirements as licensed attorneys. See McNeil v. United States, 508 U.S. 106, 113 (1993). The Supreme Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to

excuse mistakes by those who proceed without counsel." Id. Furthermore, the Court noted that "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." Id. (citing Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980)). Hudson clearly states that he failed to take any action after Hernandez was served because he "was not clear how to proceed." (D.I. 17) Hudson's pro se status does not relieve him of the "procedural rules in ordinary civil litigation;" nevertheless, the Court will grant Hudson an additional 30 days in which to proceed with his case. In the absence of action by him, the Court shall dismiss his complaint without prejudice for failure to timely prosecute pursuant to D. Del. L. R. 41(1). Id.

NOW THEREFORE, at Wilmington this 22nd day of November, 2004, IT IS HEREBY ORDERED that:

1. Hudson's Motion for Appointment of Counsel (D.I. 18) is DENIED.
2. Hudson shall take appropriate action to prosecute this case or his complaint will be dismissed pursuant to D.Del.L.R. 41(1).

Kent A. Jordan
UNITED STATES DISTRICT JUDGE