

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

ROBERT J. SLUDER,

Plaintiff,

v.

Case No. 4:18-cv-284-RH/MJF

GERALD AMATUCCI, et al.,

Defendants.

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**ORDER**

This matter is before this court upon Plaintiff’s “Motion for Appointment of Counsel,” and Plaintiff’s “Declaration in Support of Plaintiff’s Motion for Appointment of Counsel.” (Docs. 52, 53). This court will deny the motion to appoint counsel; however, this court will order the clerk of the court to issue a notice to all attorneys registered with the court’s electronic filing system inviting an attorney to represent Plaintiff voluntarily.

**I. Background**

Plaintiff alleges that, in 1998, he was in a motor-vehicle accident and suffered a spinal-cord injury. (Doc. 4 at 7). Plaintiff contends that, due to this spinal-cord injury, he suffers from “tremors, fasciculations, difficulty urinating, loss of manual

dexterity and fine motor control in all extremities (right greater than left), reduced sensation, poor balance, musculoskeletal rigidity and episodes of painful muscle spasticity throughout his body.” (*Id.*).

Prior to his incarceration, Plaintiff’s physicians had prescribed a regimen of medications—including Baclofen and Zanaflex—that reduced the residual symptoms of his injury. (*Id.*). According to his complaint, after Plaintiff was incarcerated: (1) the Florida Department of Corrections (“FDC”) failed to provide him treatment for weeks; (2) after those weeks had passed, the FDC provided “minimal and ineffective treatment” pending the receipt of Plaintiff’s medical records; (3) when the FDC eventually approved a Drug Exception Request (“DER”)<sup>1</sup> for Baclofen, it prescribed a lower dosage than his pre-incarceration regime; (4) the DER for Zanaflex was never approved by medical directors; (5) after the FDC contracted with Centurion to provide medical services to inmates, Centurion physicians communicated an intent for Baclofen to be discontinued; and (6) a nurse that treated Plaintiff told him that there is “reason to believe instruction had come from the Centurion Medical Director not to use Baclofen due to its expense.” (*Id.* at 8-9).

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<sup>1</sup> Plaintiff alleges that FDC Dr. Torado initiated two DERs—one for Baclofen and the other for Zanaflex—and informed Plaintiff that “a Medical Directors approval was required” to approve the DER. (Doc. 4 at 8).

## II. Discussion

It is well established that “[a] plaintiff in a civil case has no constitutional right to counsel.” *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999); *see Kilgo v. Ricks*, 983 F.2d 189, 193-94 (11th Cir. 1993); *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987). Likewise, courts have no obligation to appoint counsel for prisoners litigating civil cases or even those seeking post-conviction relief. *See Johnson v. Avery*, 393 U.S. 483, 488, 89 S. Ct. 747, 750 (1969). “Appointment of counsel in civil cases is, rather, a privilege ‘justified only by exceptional circumstances,’ such as the presence of ‘facts and legal issues [which] are so novel or complex as to require the assistance of a trained practitioner.” *Kilgo*, 983 F.2d at 193 (quoting *Poole*, 819 F.2d at 1028). “The key is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court.” *Id.* “Where the facts and issues are simple, he or she usually will not need such help.” *Id.* Ultimately, the court has broad discretion in making the decision whether to appoint counsel. *Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992); *Killian v. Holt*, 166 F.3d 1156, 1157 (11th Cir. 1999).<sup>2</sup>

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<sup>2</sup> According to the *in forma pauperis* statute, “[t]he court may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). Here, Plaintiff is not proceeding *in forma pauperis*, and thus cannot rely on section 1915(e)(1). A court may invoke its inherent power and appoint counsel if exceptional circumstances exist. *See in re Stone*, 986 F.3d 898, 902 (5th Cir. 1993).

A litigant requesting the appointment of counsel must make two threshold showings: (1) that he made a genuine effort to secure counsel himself; and (2) that his case presents exceptional circumstances. *Bass*, 170 F.3d at 1320 (holding that the district court “should appoint counsel only in exceptional circumstances”); *Dean*, 951 F.2d at 1216; *Poole*, 819 F.2d at 1028 (holding that the appointment of counsel is “a privilege that is justified only by exceptional circumstances”); *see Ulmer*, 691 F.2d at 213.

The Eleventh Circuit has looked to factors outlined in *Ulmer v. Chancellor* for guidance in determining if exception circumstances warrant appointment of counsel. *See Smith v. Fla. Dep’t of Corr.*, 713 F.3d 1059, 1065 n.11 (11th Cir. 2013); *see also, e.g., Neal v. Cassidy*, 511 App’x 865, 865-66 (11th Cir. 2013). Those factors include: (1) the type and complexity of the case, (2) whether the indigent is capable of adequately presenting his case, (3) whether the indigent is in a position to adequately investigate the case, and (4) whether the evidence will consist in large part of conflicting testimony so as to require the skill in the presentation of evidence and in cross-examination. *Ulmer*, 691 F.2d at 213; *see Neal*, 511 App’x at 865-66; *Smith*, 713 F.3d at 1065 n.11; *Fowler v. Jones*, 889 F.2d 1088, 1096 (11th Cir. 1990).

It appears that Plaintiff has made substantial efforts to secure counsel. In Plaintiff's declaration in support of his motion, he purports that he "has written letters to at least six (6) private attorneys or law firms, and at least five (5) public legal institutions requesting legal counsel but has been unable to secure professional counsel on his own." (Doc. 52 at 7). Plaintiff attaches as exhibits, letters he wrote to counsel and the responses he received from said counsel declining to represent Plaintiff. (Doc. 53 at 15, 20, 25, 26, 27).

In support of his motion, Plaintiff states that: (1) his case involves complex "medical issues that will require the use of at least one expert witness"; (2) he has limited access to the prison law library which hinders his ability to research, present, and investigate his case; (3) the evidence will consist in large part of conflicting testimony; and (4) his lawsuit has merit. (Doc. 52 at 3-5). Plaintiff's case challenges the denial of effective medical treatment for a spinal cord injury by the FDC and Centurion due to medication expenses. Plaintiff's incarceration and his limited access to the law library may affect his ability to litigate this case. Accordingly, Plaintiff has demonstrated that an attorney could prove helpful to Plaintiff in the litigation of this action.

The clerk of the court electronically will notify attorneys that they may seize the opportunity to represent Plaintiff. This court will not compel an attorney to

represent Plaintiff, and it is possible that no attorney will volunteer to assist Plaintiff. Plaintiff, therefore, should continue to prosecute his case and continue to comply with all court orders at this time.

### III. Conclusion

Accordingly, it is **ORDERED**:

1. Plaintiff's "Motion for Appointment of Counsel," (Doc. 52), is **DENIED** without prejudice.
2. The clerk of the court shall issue a notice to all attorneys registered with the court's electronic filing system, and publish on the court's website, the notice soliciting a volunteer attorney set forth below. The notice must state:

This is a notice of an opportunity to provide pro bono representation in the case of *Sluder v. Amatucci*, Case No. 4:18-cv-284-RH/MJF.

Plaintiff is a prisoner in the custody of the Florida Department of Corrections alleging Eighth Amendment violations against five Defendants.

Plaintiff alleges that, in 1998, he was in a motor-vehicle accident and suffered a spinal-cord injury. He claims that prior to his incarceration, Plaintiff's physicians had prescribed a regimen of medications—including Baclofen and Zanaflex—that reduced the residual symptoms of his injury. According to his complaint, after Plaintiff was incarcerated: (1) the Florida Department of Corrections failed to provide him treatment for weeks; (2) after those weeks had passed, the FDC provided "minimal and ineffective treatment" pending the receipt

of Plaintiff's medical records; (3) when the FDC eventually approved a Drug Exception Request ("DER") for Baclofen, it prescribed a lower dosage than his pre-incarceration regime; (4) the DER for Zanaflex was never approved by medical directors; (5) after the FDC contracted with Centurion to provide medical services to inmates, Centurion physicians communicated an intent for Baclofen to be discontinued; and (6) a nurse that treated Plaintiff told him that there is "reason to believe instruction had come from the Centurion Medical Director not to use Baclofen due to its expense." Further detail is provided in the complaint. (Doc. 4).

Public funds are not available for the payment of attorney's fees. Fees may be recoverable under applicable law if Plaintiff ultimately prevails. *See* 42 U.S.C. §1988(b); *World Outreach Conference Ctr. v. City of Chicago*, 234 F. Supp. 3d 904 (N.D. Ill. 2017). Limited funds sometimes are available from the district's Bench and Bar Fund for the payment of out-of-pocket expenses incurred by an attorney providing representation of this type.

Members of the district's bar will be afforded access to the electronic docket without charge for the purpose of considering whether to undertake the representation. An attorney who wishes to provide representation may contact Plaintiff directly and may enter the case by filing a notice of appearance.<sup>3</sup>

**SO ORDERED** this 30th day of January, 2020.

*/s/ Michael J. Frank*

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**Michael J. Frank**

**United States Magistrate Judge**

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<sup>3</sup> Plaintiff is currently confined at Central Florida Reception Center in Orlando, Florida.