

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

BRIAN CULVER,

Plaintiff,

v.

Case No. 5:18cv160-TKW-HTC

FEDERAL BUREAU OF PRISONS,

Defendant.

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ORDER

Before the Court is Plaintiff's Request for Appointment of Counsel. ECF Doc. 74. Plaintiff asserts "the legal issues in this case are complex and will require a skilled litigator to conduct depositions, interrogatories and a trial." He notes the Eleventh Circuit "sua sponte appointed counsel because the case presented a viable legal claim" and the lawyer appointed to represent him on appeal "has tried to help [him] obtain legal counsel but has not been successful."¹

"A plaintiff in a civil case has no constitutional right to counsel." *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). According to the *in forma pauperis* statute, 28 U.S.C. § 1915, "[t]he court may request an attorney to represent any

¹ Plaintiff's claims were dismissed by this Court in December 2019, but Plaintiff appealed, and the Eleventh Circuit remanded the case for further proceedings on Plaintiff's First Amendment claim. See *Culver v. Withers*, 2022 WL 2972835 (11th Cir. 2022).

person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). However, the Court does not have the authority to require an attorney to represent an indigent litigant. *See Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296 (1989) (holding that 28 U.S.C. § 1915 does not authorize a federal court to require an unwilling attorney to represent an indigent litigant in a civil case). Under 28 U.S.C. § 1915(e)(1), however, the Court may request representation for Plaintiff. Considering the nature of Plaintiff’s claims, the fact discovery has begun, and the Eleventh Circuit’s order appointing counsel to represent Plaintiff during his appeal, the Court will grant Plaintiff’s motion to the extent the clerk will be directed to issue a notice to all attorneys registered with the Court’s electronic filing system inviting an attorney to represent Plaintiff voluntarily.

This Order is merely a request for an attorney to represent Plaintiff; an attorney may decline to appear in this case. Plaintiff, therefore, should continue to prosecute his case and continue to comply with all Court orders at this time, including the Case Management and Scheduling Order governing discovery, ECF Doc. 73.

Accordingly, it is ORDERED:

1. Plaintiff’s Request for Appointment of Counsel, ECF Doc. 74, is GRANTED to the extent set forth in this Order.

2. The clerk must 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 notice² must state:

This is a notice of an opportunity to provide pro bono representation in the case of *Brian Culver v. Federal Bureau of Prisons*, Case No. 5:18cv160-TKW-HTC.

Plaintiff Brian Culver is serving a sentence in federal prison at FCI Marianna for producing child pornography. Plaintiff raises an as-applied First Amendment challenge to FCI Marianna's Sex Offender Management Program ("SOMP"). He alleges the SOMP uniformly prohibits inmates labeled as "sex offenders" from possessing photographs containing images of a minor child unless the minor child is the biological or adopted child of the inmate. Pursuant to this policy, in 2017 officials at FCI Marianna allegedly confiscated from Plaintiff family vacation photographs containing images of Plaintiff's minor nephews fully clothed in a public place.

These same minor nephews are allegedly on Plaintiff's approved visitation list and have visited Plaintiff in prison several times. Plaintiff argues that FCI Marianna's confiscation of these family photographs violates his First Amendment right to communicate with family and friends, *see Pope v. Hightower*, 101 F.3d 1382, 1384-85 (11th Cir. 1996) (recognizing the right), and that FCI Marianna's censorship of his incoming mail does not comply with the test set forth by the Supreme Court in *Turner v. Safley*, 482 U.S. 78, 89 (1987). Further detail is provided in the amended complaint (ECF Doc. 37).

Discovery has begun between Plaintiff and the Defendant, the Federal Bureau of Prisons. Limited funds are sometimes 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.

² The description of the case set forth in the notice is largely taken from the Eleventh Circuit's opinion remanding the case to this Court.

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 Plaintiff³ directly and may enter the case by filing a notice of appearance.

DONE AND ORDERED this 30th day of August 2022.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE

³ Plaintiff is currently confined at FCI Marianna in Marianna, Florida.