

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

ANDREW WILLIAMS,

Plaintiff,

v.

Case No. 3:21cv255-LC-HTC

RUDY M. DAVIS, BETTY KEMP,  
G. NELSON, H.S. COX,  
T. CASSIDY, and LAMBERT,

Defendants.

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ORDER

On May 13, 2022, the Court ordered Plaintiff to file his pretrial materials, including a pretrial narrative, witness list, and exhibit list by June 3, 2022. ECF Doc. 42. On or about May 31, 2022, Plaintiff submitted a 6-page handwritten document, attempting to comply with the Court's order. ECF Doc. 43. Reading Plaintiff's filing liberally, it appears Plaintiff is adopting the facts contained in the affidavit he submitted in response to the Defendants' motion for summary judgment, ECF Doc. 39, as his narrative. It also appears Plaintiff intends to rely on the following exhibits: (1) the exhibits attached to the affidavit, (2) the disciplinary report and the OIG report, included as exhibits to Defendants' motion for summary judgment, and (3)

video footage.<sup>1</sup> Finally, other than Defendants and Plaintiff, Plaintiff has not identified any other witnesses for trial. If the above is correct, Plaintiff does not need to file anything further. If, however, the Court's reading of Plaintiff's submission is incorrect and there are other exhibits or witnesses, then Plaintiff shall have fourteen (14) days to file a supplement.<sup>2</sup>

Also, attached to Plaintiff's pretrial materials was a consent to magistrate judge jurisdiction form. The consent form, however, while containing Plaintiff's printed name and date, does not contain his signature or those of the Defendants. Thus, the consent form should not have been filed. The clerk will be directed to remove Plaintiff's consent form from the record and send it back to him. As previously directed, if Plaintiff consents to magistrate judge jurisdiction, he should send the signed form to Defendants. If all Defendants consent, Defendants shall sign the consent form and counsel shall return the fully executed form to the clerk. At that time, the clerk shall file the consent form and refer it to the district judge for action.

Finally, given the posture of this case the Court finds it appropriate to request the clerk to post a notice on the Court's website seeking volunteer counsel for

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<sup>1</sup> Simply identifying exhibits in the pretrial materials does not make them admissible at trial.

<sup>2</sup> The Court notes that Plaintiff *did not* serve his pretrial submission on the Defendants' counsel as he is required to do. Plaintiff is directed that *all* filings must be served on Defendants' counsel. His failure to do so in the future may result in the filing being returned to him as deficient.

Plaintiff's case. *Requesting* counsel on behalf of a plaintiff is distinct from *appointing* counsel, with the former not requiring a showing of exceptional circumstances. *See Derks v. Corizon LLC*, 2016 WL 4942040 \*5 n.3 (N.D. Fla. Aug. 15, 2016). As the Court stated in its prior orders denying the appointment of counsel, 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; emphasizing that Congress used the word “request” in § 1915, not the word “assign” or “appoint”). Under 28 U.S.C. § 1915(e)(1), however, the Court may, at its discretion, request representation for Plaintiff.

Just because the Court posts a request for volunteer counsel, however, does not mean that any counsel will volunteer for Plaintiff's case. Plaintiff, therefore, should continue to prosecute his case and continue to comply with all Court orders.

Accordingly, it is ORDERED:

1. Plaintiff shall have **fourteen (14) days** from the date of this Order to supplement his pretrial narrative.
2. Defendants shall file their pretrial materials by **July 13, 2022**.
3. The clerk shall remove Plaintiff's consent form, ECF Doc. 43-1, from his pretrial submission, ECF Doc. 43, and return it to Plaintiff. If Plaintiff consents

to magistrate judge jurisdiction, he shall sign the form and send it to Defendants. If all Defendants consent to magistrate judge jurisdiction, they shall sign the consent form and return it to the clerk.

4. The clerk is directed to send Defendants' counsel a copy of Plaintiff's pretrial submission (ECF Doc. 43). In the future, Plaintiff shall ensure he serves Defendants' counsel with all filings. His failure to do so will result in the filing being returned to him as deficient.

5. The clerk 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 *Williams v. Davis*, Case No. 3:21-cv-255-LC/HTC.

Plaintiff is a prisoner in the custody of the Florida Department of Corrections alleging Eighth Amendment individual capacity claims against six Defendants, current or former corrections officers. He claims Defendants used excessive force against him in an incident occurring on August 30, 2017, at Century Correctional Institution. He seeks monetary damages in an amount to be determined by a jury. Further detail is provided in the complaint (ECF Doc. 1).

All Defendants have been served and have filed motions for summary judgment, which the Court denied. 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 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.

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<sup>3</sup> directly and may enter the case by filing a notice of appearance.

DONE AND ORDERED this 7<sup>th</sup> day of June, 2022.

*/s/ Hope Thai Cannon*

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**HOPE THAI CANNON**  
**UNITED STATES MAGISTRATE JUDGE**

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<sup>3</sup> Plaintiff is currently confined at Florida State Prison in Raiford, Florida.