

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

DEAMORE ANTHONY TYRONE MAJORS,
Plaintiff,

vs.

Case No.: 3:19cv5051/MCR/EMT

WALKER CLEMMONS, WARDEN,
Defendant.

ORDER

Plaintiff is an inmate of the Florida Department of Corrections proceeding pro se and in forma pauperis in this civil rights action. Presently before the court is Plaintiff's Motion Requesting Appointment of Counsel (ECF No. 19) and "Request for Subpoena" (ECF No. 20).

With respect to Plaintiff's motion for appointment of counsel, the court does not have authority to **require** an attorney to represent an indigent litigant. *See Maitland v. The United States District Court for the S.D. Iowa*, 490 U.S. 296, 301–02, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989). Therefore, the court will deny Plaintiff's motion for appointment of counsel. However, under 28 U.S.C. § 1915(e)(1), the court may **request** representation for Plaintiff. Under this authority the court will direct the clerk of court to issue a notice to all attorneys registered with

the Court's electronic filing system, inviting an attorney to voluntarily represent Plaintiff.

With respect to Plaintiff's "Request for Subpoena," the request is premature. Plaintiff essentially requests that the court compel Defendant to provide audio and video recordings from the fixed wing camera of G-dormitory, Wing 3, Cell 3107 from 5:30–7:30 p.m. (ECF No. 20). Plaintiff also requests that the court compel Defendant to supply the name and FDOC inmate number of the inmate who assaulted Plaintiff during that time (*id.*).

Plaintiff is advised that once counsel appears on behalf of Defendant, the court will issue a scheduling order which authorizes the parties to engage in discovery. It is through the discovery process that Plaintiff may request that Defendant produce the audio and video recordings as well as the identity of the inmate who attacked him. Plaintiff should review the Federal Rules of Civil Procedure to guide him in serving discovery requests upon Defendant. Both the federal rules and the scheduling order will provide guidance on how to compel production of discovery items if Defendant fails or refuses to produce them.

Accordingly, it is **ORDERED**:

1. Plaintiff's Motion Requesting Appointment of Counsel (ECF No. 19) is **DENIED**. However, the clerk of court is directed to 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 *Majors v. Clemmons*, Case No. 3:19cv5051/MCR/EMT.

Plaintiff is an openly gay prisoner housed at Santa Rosa Correctional Institution. He is bringing an Eighth Amendment claim against Warden Clemmons under 42 U.S.C. § 1983, on the ground that Clemmons exhibited, and continues to exhibit, deliberate indifference to his safety by failing to adopt and implement a policy, practice, or procedure to ensure that homophobic gang members are not assigned to Plaintiff's cell. Further details are provided in Plaintiff's First Amended Complaint (ECF No. 11). Plaintiff seeks declaratory and injunctive relief.

On February 13, 2020, the court directed the United States Marshals Service to serve process on Warden Clemmons. A return of service has not yet been filed. When counsel for Warden Clemmons files a notice of appearance, the court will issue a scheduling order.

Public funds are not available for the payment of attorney fees. Fees may be recoverable under applicable law if Plaintiff ultimately prevails. *See* 42 U.S.C. §2000e; *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412, 417, 98 S. Ct. 694, 54 L. Ed. 2d 648 (1978). 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 the clerk's office to obtain Plaintiff's contact information and may enter the case by filing a notice of appearance.

2. Plaintiff's "Request for Subpoena" (ECF No. 20) is **DENIED without prejudice.**

DONE AND ORDERED this 28th day of February 2020.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY

CHIEF UNITED STATES MAGISTRATE JUDGE