

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

**RANDY L. WOULLARD,**

**Plaintiff,**

**vs.**

**Case No. 3:20-cv-5421-MCR-MAF**

**SERGEANT ERYN CARTER,**

**Defendant.**

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**ORDER**

This matter comes before the Court upon several motions filed by Plaintiff in this case: (1) a motion for the appointment of counsel, ECF No. 69; (2) a motion for a 90-day supplemental discovery period prior to scheduling trial, ECF No. 70; and (3) a motion for the appointment of expert witnesses, ECF No. 71.

In this case, Plaintiff alleged that, when he was an inmate at Santa Rosa Correctional Institution, he was sexually harassed and assaulted by Defendant, a correctional officer. ECF No. 8. The case has survived Defendant's motion for summary judgment and is proceeding to trial. ECF Nos. 63, 66. Plaintiff expresses concern about his ability to litigate his case given his inability to afford counsel, his lack of legal training, and states he has been unsuccessful in obtaining representation. ECF No. 69.

“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 person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). The statute, however, does not allow the court to require or “appoint” an unwilling attorney to represent an indigent litigant. See Mallard v. U.S. Dist. Court for S. Dist. Of Iowa, 490 U.S. 296, 301-02 (1989) (noting Congress used the word “request” in § 1915 not the word “assign” or “appoint”).

A litigant requesting 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. See Ulmer v. Chancellor, 691 F.2d 209 (5th Cir. 1982); Bass, supra. The Eleventh Circuit has looked to the factors outlined in Ulmer for guidance in determining if exceptional circumstances warranted appointment of counsel. See Smith v. Fla. Dep’t of Corr., 713 F.3d 1059, 1065 (11th Cir. 2013) (unpublished but recognized as persuasive authority); see also, e.g., Neal v. Cassidy, 511 F. App’x 865-66 (11th Cir. 2013).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 skill in the presentation of evidence and in cross-examination. See Ulmer, 691 F.2d at 213 (cited with approval in Smith, *supra*, Fowler v. Jones, 899 F.2d 1088, 1096 (11th Cir. 1990), and Neal, *supra*).

Here, Plaintiff has not demonstrated that exceptional circumstances warrant the appointment of counsel in this case. Plaintiff's case is not a complex one. Nonetheless, because the evidence would consist largely of conflicting testimony, the Court finds that counsel would greatly aid the administration of justice and the efficiency and fairness of trial. Although the Court cannot appoint counsel for Plaintiff, the Court will solicit attorneys by directing the case to the Volunteer Lawyers' Project panel so that an interested attorney may volunteer to represent Plaintiff pro bono. Plaintiff is advised that there is no guarantee an attorney will decide to represent him in this case.

Regarding Plaintiff's motion for expert witnesses, although the Court may appoint an expert on a party's motion pursuant to Fed. R. Evid. 706, the rule contemplates the appointment of an expert to aid the Court and not for Plaintiff's benefit. See Hannah v. U.S., 523 F.3d 597, 601 (5th Cir. 2008) (quoting Pedraza v. Jones, 71 F.3d 194, 196 (5th Cir. 1995)). Plaintiff generally claims he needs a forensic expert to show that prison officials sabotaged evidence and that the investigation was prejudiced. Plaintiff also

claims he needs a mental health expert to clarify his mental condition following the assault. However, Plaintiff has not named any witness for consideration and has failed to establish that an expert would aid the Court. Thus, the motion for expert witnesses is due to be denied. Accordingly, it is

**ORDERED:**

1. Potential Representation for Plaintiff

a. Plaintiff's motion for "Appointment of Counsel for Limited Purposes," ECF No. 6, is **GRANTED in part** solely to the extent that the Court directs this case to the Volunteer Lawyers' Project panel.

b. The Clerk shall select an attorney from the appropriate divisional Volunteer Lawyers' Project panel for designation in this case, if available.

c. If panel designation is not available, the Clerk is directed to publish on the Court's public website an announcement of pro bono opportunity pertaining to this case. The announcement shall state:

This is notice of an opportunity to provide pro bono representation in a case ready to be set for jury trial in Pensacola. The case is Woullard v Carter, Case No. 3:20-CV-5421-MCR-MAF.

Plaintiff, an inmate in the custody of the Florida Department of Corrections, currently incarcerated at New River Correctional Institution, seeks relief under 42 U.S.C. § 1983 against Defendant Carter, as a result of an allegedly unconstitutional use of force on June 29, 2018, while Plaintiff was an inmate at Santa Rosa Correctional

Institution. Defendant's motion for summary judgment was denied and the case is ready to proceed to trial.

Public funds are not available for payment of attorney's fees. Fees may be recoverable under applicable law if Plaintiff ultimately prevails. See 42 U.S.C. 1988. Limited funds sometimes are available from the District's Bench and Bar Fund for payment of out-of-pocket expenses incurred by attorneys 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. Any attorney who wishes to provide representation should contact Plaintiff directly and may enter the case by filing a notice of appearance. If counsel appears, the Court will hold a scheduling conference by telephone.

Any attorney who wishes to appear should file a notice of appearance by **September 30, 2021**.

d. The Clerk is also directed to send this Order to all members of the Court's bar who receive electronic noticing.

2. Plaintiff's motion for a 90-day supplemental discovery period, ECF No. 70, is **GRANTED**. Parties shall complete supplemental discovery no later than **November 14, 2021**.

3. Plaintiff's motion for expert witnesses, ECF No. 71, is **DENIED** without prejudice.

4. Plaintiff must timely file a notice to the Clerk's Office in the event of any change in his mailing address.

**DONE AND ORDERED** on August 16, 2021.

**s/ Martin A. Fitzpatrick**  
**MARTIN A. FITZPATRICK**  
**UNITED STATES MAGISTRATE JUDGE**