

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 *sua sponte* review. The case survived summary judgment; and settlement negotiations failed. ECF Nos. 63, 66, 118, The case will proceed to trial. ECF No. 117. One year ago, the Court directed the case be directed to the Volunteer Lawyers' Project (VLP) panel, ECF No. 72. However, an attorney has not volunteered to represent Plaintiff. The Court redirects the case to the VLP panel.

“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.<sup>1</sup> 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 Dep’t of Corr., 713 F.3d 1059, 1065 (11th Cir. 2013) (unpublished but recognized as persuasive authority); see also, e.g., Neal v. Cassidy, 511 F. App’x 865-66 (11th Cir. 2013).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).

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<sup>1</sup> Plaintiff requested the appointment of counsel several times. ECF Nos. 69, 70, and 71.

In this case, Plaintiff alleged that, when he was an inmate at Santa Rosa Correctional Institution, he was sexually harassed and sexually assaulted by Defendant, a correctional officer. ECF No. 8. The case is not complex one, but because the evidence will consist largely of conflicting testimony, the Court finds that counsel would greatly aid the administration of justice and the efficiency and fairness of trial. 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 reminded there is no guarantee an attorney will decide to represent him in this case. Accordingly, it is

**ORDERED:**

1. The Court re-directs this case to the Volunteer Lawyers' Project panel.
2. The Clerk shall select an attorney from the appropriate divisional Volunteer Lawyers' Project panel for designation in this case, if available.
3. If panel designation is not available, the Clerk is directed to re-publish on the Court's public website an announcement of a 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 Florida State Prison, 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, settlement negotiations were unsuccessful, and the case is ready to proceed to trial.

Public funds are not available for payment of attorney's fees. However, 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 this type of representation.

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 **August 31, 2022**.

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

**DONE AND ORDERED** on August 1, 2022.

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