

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

ROBERT SINCLAIR LEE,

Plaintiff,

v.

Case No. 3:20cv5462-MCR-HTC

LIEUTENANT T. MCCRAINE,  
et al.,

Defendants.

\_\_\_\_\_ /

ORDER

This matter is before the Court on Plaintiff's March 30, 2022, Motion for Appointment of Counsel. ECF Doc. 77. Upon consideration, although the Court finds Plaintiff has not shown circumstances warranting appointment of counsel, the undersigned will request volunteer counsel on Plaintiff's behalf.

"A plaintiff in a civil case has no constitutional right to counsel." *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). The *in forma pauperis* statute provides that "[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. *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”).

Although a civil plaintiff has no constitutional right to the appointment of counsel, the Court may appoint counsel in a civil case on a showing of “exceptional circumstances.” *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (internal quotations omitted). A litigant moving the Court to request counsel and authorize payment of counsel on his behalf 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 (5<sup>th</sup> Cir. 1982); *Bass, supra*. As described in previous orders, although Plaintiff has documented his efforts to retain counsel James V. Cook, he has failed to demonstrate exceptional circumstances in his case requiring appointment of counsel.

As to “exceptional circumstances”, several factors may be considered, such as the type and complexity of the case, whether the litigant is capable of presenting his case, and whether the appointment of counsel will aid the court and assist in a just determination, among others. *See Ulmer v. Chandler*, 691 F.2d 209, 213 (5<sup>th</sup> Cir. 1982). Plaintiff seeks the appointment of counsel because he is unable to afford counsel, is incarcerated in close management and his access to the prison law library has been limited, he has limited knowledge of the law, and he believes this is a complex case. These circumstances, however, are not exceptional.

To the contrary, the challenges faced by Plaintiff are the same as those faced by any inmate prosecuting his case. Also, as Plaintiff recognizes, this suit involves an alleged use of excessive force and deliberate indifference to medical needs. Thus, it is based on matters personally experienced by Plaintiff. *See Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990). As Plaintiff acknowledges, at the core of this dispute will be Defendants' testimony about the events as contrasted with Plaintiff's testimony of the events in question.

Although Plaintiff contends the issues are "complex," this contention is purely conclusory. Plaintiff has not explained how the facts and circumstances of this case meet that definition. The presence of multiple defendants, alone, does not make this matter complex. Moreover, thus far, Plaintiff has been able to prosecute this case without counsel, including drafting a complaint the Court determined sufficient to be served and prepared for trial.<sup>1</sup>

Therefore, the motion to *appoint* counsel for Plaintiff will be denied. However, because the matter is heading for trial, the Court will *request* volunteer counsel to take Plaintiff's case. *Requesting* counsel on behalf of a Plaintiff is distinct from *appointing* counsel, with the former not requiring a showing of exceptional

---

<sup>1</sup> Although the Court granted Defendants' motion for summary judgment on certain claims (Claims 2,7,8,10,11 and 14), the Defendants did not move for summary judgment on the remaining claims, which each allege excessive force or deliberate indifference to serious medical needs. ECF Doc. 65.

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, 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.

Plaintiff is advised that this order is merely a *request* for an attorney to represent Plaintiff; an attorney may decline to appear in this case. **Plaintiff, therefore, must continue to prosecute his case and continue to comply with all Court orders at this time (including the order setting the deadline of April 12, 2022, for Plaintiff to file pretrial materials). This order does not stay any deadlines and Plaintiff’s failure to prosecute will result in a recommendation of dismissal**

Accordingly, it is ORDERED:

1. Plaintiff's March 30, 2022 Motion for Appointment of Counsel, ECF Doc. 77, is DENIED other than as set forth herein.

2. 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 *Lee v. McCranie, et al.*, 3:20cv5462-MCR-HTC (N.D. Fla).

Plaintiff, a prisoner serving a life sentence at Santa Rosa Correctional Institution ("SRCI") at the time of the events involved, filed an amended complaint, ECF Doc. 6, complaining of a property restriction, use of chemical agents, strip search, cell extraction, and denial of medical care that occurred on September 4, 2019. Plaintiff sues several SRCI officers: Lieutenant McCranie, Lieutenant Dice, Sergeant Richburg, Officer Tona, Officer Jones, Officer Boatwright, Sergeant Cattnach, and two (2) John Doe Officers. Plaintiff claims that Lt. McCranie and Officer Tona came to Plaintiff's cell and told him he was being put on property restriction for no reason. Plaintiff asked why and no reason was given. Later, after a crisis intervention team counsel came to the cell and left, Lt. McCranie chained the door open, and ordered two applications of chemical agents. Lt. McCranie then ordered a cell extraction team to enter the cell even though Plaintiff indicated he would comply with being transported to a decontamination shower. Plaintiff alleges the cell extraction team used excessive force during the extraction, then prevented him from receiving adequate medical attention. Plaintiff alleges he suffered bruising, his left eye swollen shut and cuts to the sides of his head and, in particular, his ear which he claims needed to be "glued". He seeks nominal, compensatory and punitive damages. Defendants claim that the force used was no more than necessary to overcome Plaintiff's physical resistance to lawful commands. More details are available from the

Amended Complaint, ECF Doc. 6, and Report and Recommendation on the Motion for Summary Judgment, ECF Doc. 65.

The Court granted summary judgment on some claims but directed the parties to submit pretrial narratives and witness and exhibit lists on the remaining excessive force and medical deliberate indifference claims.

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>2</sup> directly and may enter the case by filing a notice of appearance.

DONE AND ORDERED this 11<sup>th</sup> day of April, 2022.

*/s/ Hope Thai Cannon*

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

---

<sup>2</sup> Plaintiff is currently confined at Florida State Prison at Raiford, Florida.