

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

CHRISTOPHER MICHAEL TIERNEY,  
Plaintiff,

vs.

Case No.: 3:20cv5738/LAC/ZCB

OFFICER J HATTAWAY, et al.,  
Defendants.

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**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 for Appointment of Counsel. (Doc. 53).

The court denied Plaintiff's previous motion for appointment of counsel after an extensive analysis of the materials and arguments submitted by the parties. (*See* Doc. 19). Since that time, there has been a material change in circumstances. Namely, the Court has denied Defendants' motion to dismiss and their motion for summary judgment. (*See* Docs. 68, 74, 75, 78). Plaintiff has requested the appointment of counsel to assist him in locating and deposing 10 "inmate witnesses," 15 correctional officers, 2 nurses, and 2 "Inspector General's Office Representatives." (Doc. 53 at 1-2). Plaintiff states the inmate witnesses are located

at different institutions and FDOC's "inter-institutional communication" policy prevents Plaintiff from properly deposing these individuals. (*Id.* at 2). Plaintiff also states that "this case will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and cross examination." (*Id.*). Plaintiff asserts he is "experiencing adversity in different aspects of evidentiary acquisition" for his case. (*Id.* at 3).

The Court ordinarily does not have authority to **require** an attorney to represent an indigent civil litigant. *See Maitland v. The United States District Court for the S.D. Iowa*, 490 U.S. 296, 301–02 (1989). Thus, the Court will deny Plaintiff's motion to the extent that he is requesting that the Court order an attorney to represent Plaintiff. The Court will, however, **request** that an attorney appear to represent Plaintiff under 28 U.S.C. § 1915(e)(1). 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. **Plaintiff is advised, however, that this request does not guarantee him representation in this case; and he must continue to prosecute this case himself unless and until counsel appears on his behalf.**

Accordingly, it is **ORDERED**: Plaintiff's Motion for Appointment of Counsel (Doc. 53) 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 *Tierney v. Hattaway, et al.*, Case No. 3:20cv5738/LC/ZCB.

Plaintiff is an inmate of the Florida Department of Corrections, currently housed at Santa Rosa Correctional Institution. Plaintiff seeks relief under 42 U.S.C. § 1983 against four correctional officers at Santa Rosa Correctional Institution for an alleged use of excessive force on May 10, 2020 (*See* Doc. 25). Plaintiff also brings state tort claims of assault, battery, and infliction of emotional distress. Plaintiff seeks compensatory and punitive damages.

All four Defendant officers have appeared in this case, and the Court issued a scheduling order. (Doc. 41). Discovery was completed on August 22, 2022, and dispositive motions were due on November 14, 2022. The Court denied Defendants' motion to dismiss and motion for summary judgment.

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 (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 after obtaining consent of the Plaintiff to the representation.

**DONE AND ORDERED** this 23rd day of February 2023.

/s/ Zachary C. Bolitho

Zachary C. Bolitho

United States Magistrate Judge