

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

ORLANDO PEREZ MARTINEZ,

Plaintiff,

v.

Case No. 4:18-cv-546-TKW/MJF

K. LINTON, *et al.*,

Defendants.

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**ORDER**

This prisoner civil rights case is set for a settlement conference on March 30, 2021. (Doc. 95). Additionally, this case is set for a jury trial commencing on June 1, 2021. (Doc. 94). Upon consideration, this court will invite attorneys to volunteer to represent Plaintiff *pro bono*.

**I. BACKGROUND**

Plaintiff initiated this action on November 19, 2018, by filing a complaint under 42 U.S.C. § 1983. (Doc. 1). Plaintiff named as Defendants six prison officials at Taylor Correctional Institution: Sergeant K. Linton, Sergeant R. Slayton, Officer Randall D. Brown, Adelina Becerra, Officer C.M. Cooper, and Clinton Buckley. Plaintiff sued the Defendants in their individual and official capacities for violating his Eighth-Amendment rights. Plaintiff alleges that on September 28, 2017, Defendant Brown ignored Plaintiff's valid medical pass restricting him from

working in food service and, when Plaintiff attempted to show Brown the medical pass, falsely reported that Plaintiff was being disruptive. Plaintiff contends that Defendants Linton, Slayton, Becerra, and Buckley responded to Brown's report and, while escorting Plaintiff to confinement in handcuffs, beat him. Plaintiff alleges that after the beating, Defendant Cooper refused his plea for medical attention, stripped Plaintiff of his clothing and bedding, and forced him to sleep naked on a bare steel bunk for 72 hours. Plaintiff seeks damages and injunctive relief.<sup>1</sup>

## II. DISCUSSION

Plaintiff previously requested that this court appoint counsel to represent him. (Doc. 44). Plaintiff stated that he is indigent and unable to retain legal counsel, that he relies on an inmate law clerk's assistance to prepare and file his legal pleadings, and that he is a native Spanish speaker and is "unable to communicate and understand the legal necessities of rules, procedure, and/or courtroom tactics required to prosecute this case diligently." (*Id.*). The undersigned denied Plaintiff's request, because he did not detail any efforts he made to secure *pro bono* counsel himself, and because the court does not have the authority to appoint counsel for Plaintiff. (Doc. 47).

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<sup>1</sup> Plaintiff's official-capacity damages claims have been dismissed with prejudice. (Doc. 82).

“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. *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”).

After this case proceeded through discovery and dispositive motions, the court ordered the parties to notify this court of the possibility for prompt settlement or resolution of this case. (Doc. 91), Defendants’ counsel confirmed that Plaintiff is a “native Spanish speaker and that his English language abilities are very basic.” (Doc. 93 at 2).

In light of the upcoming settlement conference and jury trial, among other considerations, the undersigned will direct the clerk of the court to electronically notify attorneys that they may seek to represent Plaintiff *pro bono*. It is possible that no attorney will volunteer to assist Plaintiff. Plaintiff, therefore, should continue to prosecute his case and continue to comply with all court orders.

### III. CONCLUSION

Accordingly, it is **ORDERED**:

The clerk of the court shall issue a notice to all attorneys registered with the court's electronic filing system, and shall publish on the court's website, the notice soliciting a volunteer attorney set forth below. The notice shall state:

This is a notice of an opportunity to provide *pro bono* representation in the case of *Martinez v. Linton*, Case No. 4:18-cv-546-TKW/MJF.

Plaintiff, an inmate in the custody of the Florida Department of Corrections, alleges that six Defendants violated his rights under the Eighth Amendment of the United States Constitution.

Plaintiff alleges that on September 28, 2017, Defendant Brown ignored Plaintiff's medical pass which restricted him from working in food service and, when Plaintiff attempted to show Brown his medical pass, Brown falsely reported that Plaintiff was being disruptive. Plaintiff alleges that Defendants Linton, Slayton, Becerra, and Buckley responded to Brown's report and, while escorting Plaintiff to confinement in handcuffs, beat him without justification. Plaintiff alleges that Defendant Cooper refused his plea for medical attention, stripped Plaintiff of all clothing and bedding, and forced him to sleep naked on a bare steel bunk for 72 hours.

Plaintiff is most comfortable speaking the Spanish language.

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(b); *World Outreach Conference Ctr. v. City of Chicago*, 234 F. Supp. 3d 904 (N.D. Ill. 2017). Limited funds sometimes are 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 directly and may enter the case by filing a notice of appearance. Plaintiff is currently confined at Mayo Correctional Institution in Mayo, Florida.

**SO ORDERED** this 19th day of February, 2021.

*/s/ Michael J. Frank*

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**Michael J. Frank**

**United States Magistrate Judge**