

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

ZEBELEDE GARRISON,

Plaintiff,

v.

Case No. 5:19-cv-291-TKW/MJF

CAPTAIN J. POPE, *et al.*,

Defendants.

_____ /

ORDER

Plaintiff, a Florida prisoner proceeding *pro se* and *in forma pauperis*, has filed a motion for the appointment of counsel. Doc. 68. Plaintiff alleges that he requires counsel because the issues in this case are complex and he is a segregation inmate with limited access to the law library. Doc. 68. Plaintiff has contacted three attorneys requesting *pro bono* representation, but has not received a response. Doc. 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. *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”).

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*.

At this stage of the case, the parties are preparing their exhibit and witness lists, and providing summaries of the evidence they intend to introduce at trial. *See* Doc. 67. Plaintiff has not explained why access to a law library is necessary to prepare these pre-trial submissions. Nevertheless, in light of the upcoming jury trial, the undersigned will direct the clerk of the court to electronically notify attorneys that they may seek to represent Plaintiff *pro bono*. Plaintiff is reminded that it is possible that no attorney will volunteer to assist him, and that this court is without the authority to require an unwilling attorney to represent him. *See Mallard, supra*. Plaintiff, therefore, should continue to prosecute his case and continue to comply with all court orders.

Accordingly, it is **ORDERED**:

1. Plaintiff’s motion for the appointment of counsel, Doc. 68, is **DENIED** without prejudice.

2. 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 following notice soliciting a volunteer attorney. The notice shall state:

This is a notice of an opportunity to provide *pro bono* representation in the case of *Garrison v. Pope*, Case No. 5:19-cv-291-TKW/MJF.

Plaintiff, an inmate in the custody of the Florida Department of Corrections, alleges that two Defendants violated his rights under the Eighth Amendment of the United States Constitution. Plaintiff alleges that on January 15, 2019, the Defendants maliciously sprayed a chemical agent directly into his cell in response to Plaintiff informing them that he was having an asthmatic attack.

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 Conf. 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 Charlotte Correctional Institution in Punta Gorda, Florida.

SO ORDERED this 22nd day of November, 2021.

/s/ Michael J. Frank

Michael J. Frank

United States Magistrate Judge