

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

TRAVIS McGHEE,

Plaintiff,

v.

Case No. 5:19-cv-408-TKW/MJF

WARDEN, *et al.*,

Defendants.

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**ORDER**

This matter is before this court upon Plaintiff's "Motion for Appointment of Counsel." (Doc. 3). This court will deny the motion to appoint counsel. This court, however, will order the clerk of the court to issue a notice to all attorneys registered with the court's electronic filing system inviting an attorney to represent Plaintiff voluntarily.

**I. Background**

Plaintiff commenced this action pursuant to *Bivens v. Six Unknown Named Agents of the Bureau of Narcotics*, 403 U.S. 388 (1971). He has named the following eight individuals as Defendants: (1) the Warden at FCI Marianna from 2014-2016; (2) the Assistant Warden at FCI Marianna from 2014-2016; (3) Ms. English; (4) Todd Lewis; (5) "Mr. Short, Sr."; (6) "Mr. Short Jr."; (7) a John Doe Table Supervisor; and (8) a Jane Doe Defendant. (Doc. 16 at 1-2).

Plaintiff alleges that was confined at FCI Mariana from approximately early 2014 through early 2016. (*Id.* at ¶ 4). While he was housed at FCI Mariana, he worked for a UNICOR plant that recycled electronic equipment. (*Id.* at ¶ 5). Plaintiff alleges that because of this job, he was exposed to toxins, including heavy metals and chemical carcinogens. (*Id.* at ¶¶ 6, 15). Plaintiff asserts that Defendants sometimes provided protective equipment—such as masks, gloves, and safety glasses—but that up to 75% of the time Defendants did not provide Plaintiff with the proper protective gear. (*Id.* at ¶¶ 7-9, 12). Plaintiff alleges that, because of his exposure to toxins at FCI Marianna, he suffers from sarcoidosis. (*Id.* at ¶¶ 16-20). Plaintiff claims that he needs a lung transplant and has end-stage lung disease due to his sarcoidosis. (*Id.* at ¶¶ 1-3).

## **II. Discussion**

It is well established that “[a] plaintiff in a civil case has no constitutional right to counsel.” *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999); *see Kilgo v. Ricks*, 983 F.2d 189, 193-94 (11th Cir. 1993); *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987). Likewise, courts have no obligation to appoint counsel for prisoners litigating civil cases or even those seeking post-conviction relief. *See Johnson v. Avery*, 393 U.S. 483, 488 (1969). “Appointment of counsel in civil cases is, rather, a privilege ‘justified only by exceptional circumstances,’ such as the presence of ‘facts and legal issues [which] are so novel or complex as to require

the assistance of a trained practitioner.” *Kilgo*, 983 F.2d at 193 (quoting *Poole*, 819 F.2d at 1028). “The key is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court.” *Id.* “Where the facts and issues are simple, he or she usually will not need such help.” *Id.* Ultimately, the court has broad discretion in making the decision whether to appoint counsel. *Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992); *Killian v. Holt*, 166 F.3d 1156, 1157 (11th Cir. 1999).<sup>1</sup>

A litigant requesting the appointment of 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. *Bass*, 170 F.3d at 1320 (holding that the district court “should appoint counsel only in exceptional circumstances”); *Dean*, 951 F.2d at 1216; *Poole*, 819 F.2d at 1028 (holding that the appointment of counsel is “a privilege that is justified only by exceptional circumstances”); *see Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982).

The Eleventh Circuit has looked to factors outlined in *Ulmer v. Chancellor* for guidance in determining if exception circumstances warrant appointment of counsel. *See Smith v. Fla. Dep’t of Corr.*, 713 F.3d 1059, 1065 n.11 (11th Cir. 2013); *see also, e.g., Neal v. Cassiday*, 511 App’x 865, 865-66 (11th Cir. 2013).

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<sup>1</sup> According to the *in forma pauperis* statute, “[t]he court may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1).

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 the skill in the presentation of evidence and in cross-examination. *Ulmer*, 691 F.2d at 213; *see Neal*, 511 App'x at 865-66; *Smith*, 713 F.3d at 1065 n.11; *Fowler v. Jones*, 889 F.2d 1088, 1096 (11th Cir. 1990).

In support of his motion, Plaintiff states that he has limited access to the prison law library which hinders his ability to research, present, and investigate his case. Plaintiff's case challenges the conditions of confinement—specifically an alleged exposure to harmful chemicals—and the sarcoidosis that purportedly resulted. Plaintiff no longer resides at FCI Mariana. Indeed, he now is incarcerated in North Carolina. Also, he does not know the names of all the Defendants, but will seek to acquire that information through the discovery process. Plaintiff's incarceration and his limited access to the law library may affect his ability to litigate this case. Accordingly, Plaintiff has demonstrated that an attorney could prove helpful in the litigation of this case.

The clerk of the court electronically will notify attorneys that they may seek to represent Plaintiff. This court will not compel an attorney to represent Plaintiff, and 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.

Accordingly, it is **ORDERED**:

1. Plaintiff's "Motion for Appointment of Counsel," (Doc. 3), 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 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 *McGhee v. Warden*, Case No. 5:19-cv-408-TKW/MJF.

Plaintiff is a prisoner in the custody of the Bureau of Prison alleging that eight Defendants violated his rights under the Eighth Amendment to the United States Constitution.

Plaintiff alleges that he was incarcerated at FCI Mariana from 2014 through 2016. During this time, he was assigned to a UNICOR work plant. According to his complaint, he was exposed to harmful chemicals and carcinogens because Defendants failed to provide him with the necessary protective equipment. Plaintiff asserts that he developed sarcoidosis as a result of exposure to toxins. Further detail is provided in Plaintiff's amended complaint. (Doc. 16).

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 FCI Butner in North Carolina.

**SO ORDERED** this 17th day of June, 2020.

*/s/ Michael J. Frank* \_\_\_\_\_

**Michael J. Frank**

**United States Magistrate Judge**