

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

DONALD R. JONES,
Plaintiff,

v.

Case No. 3:21cv487-MCR-HTC

SERGEANT B. CASH, et al.,
Defendants.

_____ /

ORDER

Having resolved the last pending motion for summary judgment, ECF Doc. 69, the Court finds this matter is ready to be set for trial. This Order sets forth the procedures and requirements for the submission of the parties' pretrial narratives and other trial materials.

Also, the Court finds it appropriate to *sua sponte* post a request for volunteer counsel and will direct the clerk to issue a notice to all attorneys registered with the Court's electronic filing system, inviting them to represent Plaintiff *pro bono*.¹ However, Plaintiff is advised the fact the Court is requesting volunteer counsel does not mean any counsel will actually agree to represent Plaintiff in this case. As the

¹ In the Court's last order denying the appointment of counsel, the Court stated it would *sua sponte* consider requesting volunteer counsel, should circumstances warrant such a request. ECF Doc. 25.

Court has repeatedly stated, there is no constitutional right to counsel for civil plaintiffs and the Court has no authority to require an unwilling attorney to represent an indigent litigant. *See Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 300–08 (1989) (holding that the *in forma pauperis* statute, 28 U.S.C. § 1915(d), does not authorize compulsory appointments). **Plaintiff, therefore, is advised to continue to prosecute his case and to comply with all Court orders, including the deadline set forth below.**

Finally, the record reflects the parties were advised that, in accordance with 28 U.S.C. § 636(c), they could voluntarily consent to the referral of this case to the United States Magistrate Judge for trial and for the entry of a final judgment. ECF Doc. 21 at 6–7. Pursuant to § 636(c)(2), the parties are again advised of their right to consent to trial before the Magistrate Judge. The parties are, of course, free to withhold such consent without any adverse consequences. The clerk shall be directed to send a copy of the consent form to Plaintiff, along with this Order. Plaintiff should sign the form and forward it to counsel for Defendants if Plaintiff wishes to consent. Counsel for Defendants should, in turn, sign the form and return it to the Court if Defendants consent. In the event the parties consent to magistrate jurisdiction, the undersigned will conduct the trial and will enter final judgment. If consent is not given by the parties, the assigned District Judge will conduct the trial.

Consenting to magistrate jurisdiction does not change or alter either parties' right to a jury trial.

Accordingly, it is ORDERED:

1. On or before **Tuesday, November 1, 2022**, Plaintiff shall file (and serve on Defendants) the following:

A. A narrative written statement of the facts that will be presented on his behalf through oral or documentary evidence at trial.

B. A list of all exhibits Plaintiff will offer into evidence at trial.

C. A list of the names and addresses of all the witnesses Plaintiff intends to call and a succinct summary of the expected testimony of each witness. Plaintiff shall indicate what witnesses, if any, are inmates.²

D. Plaintiff shall serve upon counsel for the Defendants a complete copy of all the foregoing and shall include in the original document filed with the clerk a certificate stating the date a true and correct copy was mailed to Defendants' counsel.

2. Within **twenty-one (21) days** after the docketing of the Plaintiff's materials on CM/ECF, Defendants shall file (and serve on Plaintiff) the following:

² Although the Court may, upon request, issue writs *ad testificandum* in a case of this nature to procure the presence of inmate witnesses at trial, there is no authority to allocate funds to pay for the attendance of witnesses if their attendance is procured by subpoena. The Court will not issue subpoenas for witnesses who cannot be compensated for their attendance.

A. A narrative written statement of the facts that will be presented on their behalf through oral or documentary evidence at trial.

B. A list of all exhibits Defendants will offer into evidence at trial.

C. A list of the names and addresses of all the witnesses Defendants intend to call and a succinct summary of the expected testimony of each witness.³

3. The clerk shall send Plaintiff a copy of the magistrate judge consent form along with this Order.

4. The clerk shall issue a notice soliciting a volunteer attorney in this case. Said notice must be transmitted to all attorneys registered with the Court's electronic filing system and must also be published on the Court's website. The notice must state:

This is a notice of an opportunity to provide pro bono representation in the case of *Jones v. Cash, et al.*, Case No. 3:21-cv-00487-MCR-HTC.

Plaintiff is a prisoner in the custody of the Florida Department of Corrections alleging Eighth Amendment violations against six Defendants, all of whom are correctional officers. He claims the officers failed to recognize he was having a seizure and, instead of responding to his medical needs, four Defendants used excessive force to restrain him, while the other two failed to intervene and stop the use of force. As a result of the alleged incident, Plaintiff contends he suffered multiple injuries, including a broken and dislocated elbow that

³ Failure of the parties to fully disclose in the pretrial narrative statement or at the pretrial conference the substance of the evidence to be offered at trial may result in exclusion of that evidence at trial. The only exceptions will be (a) matters which the Court determines were not reasonably discoverable at the time of the pretrial conference, (b) privileged matters, and (c) matters to be used solely for impeachment of a witness.

required surgery. Further detail is provided in Plaintiff's Third Amended Complaint, ECF Doc. 37.

The period for conducting discovery has concluded, the Court has addressed all dispositive motions, and the case is now ready to be set for trial. The deadline for Plaintiff to submit his pretrial materials is Tuesday, November 1, 2022. The Court, however, will consider continuances, as may be necessary, upon proper showing, should counsel appear for Plaintiff.

Public funds are not available for the 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 Chi.*, 234 F. Supp. 3d 904, 909 (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 Plaintiff⁴ directly and may enter the case by filing a notice of appearance.

DONE AND ORDERED this 11th day of October 2022.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE

⁴ Plaintiff is currently confined at Blackwater River Correctional Facility in Milton, Florida.