

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

**BENJAMIN D. FERGUSON,
D.O.C. # 351310,**

Plaintiff,

vs.

Case No. 4:23cv502-RH-MAF

**RICKY DIXON, SECRETARY,
FLORIDA DEPARTMENT OF
CORRECTIONS,**

Defendant.

_____ /

ORDER

The pro se Plaintiff is a prisoner in the custody of the Florida Department of Corrections. Plaintiff's first amended complaint alleges the denial of medical care. ECF No. 20. Specifically, Plaintiff says he's been denied eye surgery to remove a cataract in his right eye, which is his only good eye because he has been blind in his left eye since 1983. *Id.* at 5.

This case has been stayed until after Plaintiff's cataract surgery so Plaintiff could sufficiently see and respond to Defendant's pending motion to dismiss. See ECF Nos. 45-46. Plaintiff's motion to stay, ECF No. 45,

was filed on August 28, 2024, and Plaintiff was required to file status updates concerning his upcoming surgery. ECF Nos. 46, 48, 50, 52, and 54.

In the last Order, the Court noted its concerns. ECF No. 54. After receiving an “urgent” designation for eye surgery in November 2023, Plaintiff still has not had surgery. Indeed, Plaintiff has been awaiting eye surgery for over three years because his amended complaint alleged first being referred for surgery by an optometrist in January 2022. See ECF No. 20 at 6-7.

Plaintiff has filed a fourth status update. ECF No. 57. He advises that he “continues to await his much-needed surgery.” *Id.* at 1. Plaintiff has only been informed that his surgery was supposed to have occurred in January 2025, but was rescheduled. ECF Nos. 53, 58. As a prisoner, he will not be advised of a specific date, but he was informed that his surgery would be expedited. ECF No. 57 at 3. As of mid-March 2025, it has not happened. Instead, Plaintiff was sent for a third evaluation with the ophthalmologist in late February 2025. *Id.* That doctor expressed concern that the delay caused the cataract to increase and has made “the surgery more difficult and dangerous.” *Id.*

It is concerning that necessary and “urgent” surgery has been delayed for three years. It should have been performed long before now. Plaintiff is hindered in his ability to prosecute this case which has now been stayed since August 2024. ECF Nos. 45-46.

Notably, Plaintiff had previously filed several motions requesting the appointment of counsel. See ECF Nos. 27 and 43. The motions were denied without prejudice, ECF Nos. 30 and 44, but Plaintiff was advised that the need for counsel would be independently evaluated and counsel sought if deemed necessary. ECF No. 30 at 2. Plaintiff would be better served by the assistance of counsel in this civil rights case challenging the adequacy of medical care provided to him. This Order directs the Clerk of Court to issue a notice to all attorneys registered with the Court’s electronic filing system inviting an attorney to represent Plaintiff voluntarily.¹

In light of this Order, Plaintiff is advised that he must immediately file a notice with the Court should his address change in any way. It is

¹ Plaintiff should be aware that the Court does not have the authority pursuant to 28 U.S.C. § 1915(e)(1) to require an attorney to represent an indigent litigant. Maitland v. The United States District Court for the S.D. Iowa, 490 U.S. 296, 301-302, 109 S.Ct. 1814, 104 L.Ed.2d 318(1989). The statute permits the Court to *request* representation for Plaintiff, but an attorney may not be compelled to do so.

imperative that counsel be able to locate and contact Plaintiff should an attorney decide to take this case.

The stay will continue and Plaintiff must file another status update by **May 5, 2025**. Of course, if Plaintiff receives surgery before that date, Plaintiff must file an update as soon as possible.

Accordingly, it is

ORDERED:

1. No later than **May 5, 2025**, Plaintiff must file a fifth status update to clarify the status of his eye surgery.

2. Plaintiff shall continue to keep the Clerk's Office advised of any additional address changes due to transfer or release from custody.

3. Plaintiff's third motion for appointment of counsel, ECF No. 58, is

GRANTED.

4. The Clerk of Court must send a notice to all attorneys registered with the Court's electronic filing system. The notice must state:

This is notice of an opportunity to provide pro bono representation in a civil rights case. The case

is Benjamin D. Ferguson v. Ricky Dixon, case no. 4:23cv502-RH/MAF.²

Plaintiff is a prisoner in the custody of the Florida Department of Corrections. He claims that in January 2022, a referral was entered for emergency eye surgery to remove a cataract in his right eye. Plaintiff has been blind in his left eye since 1983. As of this date, surgery still has not been performed. Plaintiff asserts First, Eighth, and Fourteenth Amendment claims against the Defendant. Further detail is provided in the First Amended Complaint, ECF No. 20.

This case is at an early stage. A motion to dismiss is pending, and discovery has not yet been directed.

Public funds are not available for the payment of attorney's fees. However, fees may be recoverable under applicable law if Plaintiff ultimately prevails. See 42 U.S.C. §1988(b); Maier v Gagne, 488 U.S. 122, 128-129 (1980); World Outreach Conference Ctr. v. City of Chicago, 234 F. Supp. 3d 904 (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

² Plaintiff's amended complaint demands a jury trial. ECF No. 20 at 1. Defendant Dixon has filed a motion to dismiss, ECF No. 40, which is pending.

provide representation may contact Plaintiff³ directly and may enter the case by filing a notice of appearance.

An attorney who wishes to appear should file a notice of appearance by May 5, 2025.

4. The Clerk of Court shall return this file upon the filing of another status report, an appearance of counsel, or no later than May 5, 2025.

DONE AND ORDERED on March 17, 2025.

S/ Martin A. Fitzpatrick

MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

³ Plaintiff is currently housed at Zephyrhills Correctional Institution in Zephyrhills, Florida. His inmate number is 351310.