

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ERIC L. WALKER, II,

Plaintiff,

v.

Case No. 3:22cv1466-LC-HTC

SERGEANT JOSHUA HATTAWAY,
SERGEANT J. REIFSCHNELDER, and
CAPTAIN COREY SETTLEMIRE,

Defendants.

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ORDER

Before the Court is Plaintiff's Request for Appointment of Counsel, ECF Doc. 42, and Motion to Extend Time, ECF Doc. 43. In the Motion to Appoint Counsel, Plaintiff asserts (1) he is indigent and confined in the FDOC; (2) he requested documents and video from Defendants but never received them; (3) he was only given 2 hours to read 228 pages of redacted FDOC regulations provided to him; (4) Defendants require Plaintiff to mail counsel a check to obtain copies of "the documents sent" (Plaintiff does not explain what documents he is talking about); and (5) Defense counsel insists on having access to all of Plaintiff's medical records, not just those from May 2019 to October 2022 and have "held this as 'ransom' to the Plaintiff's request for video evidence." *Id.* As discussed below, the Court cannot

appoint counsel for Plaintiff, but the circumstances of the case justify the Court issuing a notice requesting volunteer counsel. Additionally, the Court will grant the extension of time requested by Plaintiff.

“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). However, the Court does not have the authority to require an attorney to represent an indigent litigant and does not have the discretion to authorize payment of the attorney’s fee by the government. *See 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 or the payment of attorney fees).

Under 28 U.S.C. § 1915(e)(1), the Court can request counsel on behalf of Plaintiff “where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” *Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992); *see also Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). While Plaintiff’s indigency, confinement, and discovery difficulties are not alone sufficient to justify a request for attorney representation, the discovery and dispositive motion deadlines have passed, and the case is moving towards trial. The Plaintiff and the

Court will benefit from the appearance of counsel if one were to volunteer to represent Plaintiff. Therefore, the Court will *sua sponte* direct the clerk to issue a notice to all attorneys registered with the Court's electronic filing system inviting an attorney to represent Plaintiff voluntarily.

This Order is merely a request for an attorney to represent Plaintiff; an attorney may decline to appear in this case. *See also, Shuler v. Fla. Dep't of Corr.*, 2018 WL 11273630, at *1 (S.D. Fla. Aug. 8, 2018) ("Any lawyer who agrees to undertake such representation must bear all his or her own expenses, such as travel expenses, and can receive no compensation unless the plaintiff ultimately prevails in the case. If the plaintiff does prevail, the Court can award a reasonable attorney's fee as part of the costs, pursuant to 42 U.S.C. § 1988."). Plaintiff, therefore, should continue to prosecute his case and continue to comply with all Court orders at this time, including the order governing pretrial materials, ECF Doc. 41. **The posting for volunteer counsel does not stay these proceedings.** The Court, however, will extend the time for Plaintiff to provide his pretrial materials as requested by Plaintiff.

Accordingly, it is ORDERED:

1. Plaintiff's Request for Appointment of Counsel, ECF Doc. 42, is DENIED. The Court, however, will request the clerk post a notice for volunteer counsel to all attorneys registered with the Court's electronic filing system, and on the Court's website. The notice shall state as follows:

This is a notice of an opportunity to provide pro bono representation in the case of *Eric L. Walker, II, v. Hattaway et al.*, 3:22-cv-01466-LC-HTC.

Plaintiff Eric L. Walker, II, an inmate at DeSoto Correctional Institution Annex, has filed suit against three officers at Okaloosa CI for excessive use of force and retaliation.

Plaintiff claims to have suffered injuries to his left collarbone requiring surgery; a shoulder fracture; multiple lacerations to the crown of his head; bruising and swelling around his left hand's middle finger knuckle, neck, face and arms; and a puffy, red and irritated eye. He seeks compensatory and punitive damages. Further detail is provided in the amended complaint (ECF Doc. 37).

The discovery period has closed, and the dispositive motion deadline has expired without any dispositive motions filed. Thus, the parties are at present preparing pretrial materials in preparation for the case to go to trial. A trial date has not been set and this case has not been mediated.

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 Plaintiff directly and may enter the case by filing a notice of appearance.

2. The Plaintiff's Motion to Extend Time, ECF Doc. 43, is GRANTED, and Plaintiff shall have until **Monday, February 6, 2023**, to provide the pretrial materials described in the Court's December 19, 2022 Order, ECF Doc. 41. The Defendant's materials shall be due by **Monday, February 27, 2023**.

DONE AND ORDERED this 6th day of January 2022.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE