

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CHRISTIAN F. MEISTER,

Plaintiff,

-vs-

Case No. 2:06-cv-444-FtM-34SPC

LEE COUNTY SHERIFF'S OFFICE; MIKE  
SCOTT; J.J. CARROLL; RICHARD SNEYER;  
RYAN JUSTHAM; STEPHAN PIERCE; GENE  
SIMS; PEDRO J. SOTO; MIKE JOHNSTON,

Defendants.

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**ORDER**

This matter comes before the Court on the Plaintiff Christian Meister's Motion to Strike All Defendants' Motions for Summary Judgment, Motion to Stay this Litigation for a Period of Six Months, Motion for Enlargement of Time, Motion to Appoint an Attorney, Motion to Order All Defendants to Release Any All Deposition Transcripts at no Charge to the Plaintiff (Doc. #172 ) filed on May 30, 2008. The Defendants Don Hunter and J.J. Carroll filed their Response (Doc. # 173) on June 4, 2008. The Defendants Pedro J. Soto, Mike Johnston, Mike Scott, Richard Snyder, Ryan Justam, Stephan Pierce, and Gene Sims filed their Response (Doc. # 174) on June 5, 2008. The Plaintiff seeks a wide variety of relief in the instant Motion. The Court will address each issue separately as they appear in the Motion. The ruling for the Motion to Strike is reserved for the District Court.

*(1) Stay the Case*

A federal district court has broad discretion in granting or denying a stay and its decision will not be disturbed absent an abuse of discretion. Diaz v. Jenne, 2007 WL 624286 \*1 (S.D. Fla.

February 23, 2007). In this Motion, the Plaintiff states he needs a six (6) month stay in the case in order to file proper responses to the Defendants' Motions for Summary Judgment. As grounds, the Plaintiff states that he is proceeding *pro se* and that he cannot gather the required documents and formulate a quality response to the Motions for Summary Judgment without at least six months. Although, the Plaintiff is *pro se* he is still required to follow the timelines and prosecute his case in a reasonable amount of time. The Plaintiff's request for a six month extension based solely on his status as a *pro se* party is unreasonable and, therefore, due to be denied.

### (2) Enlargement of Time

District courts have broad discretion in managing their cases. Chrysler Int'l Corp. v. Chenaly, 280 F.3d 1358, 1360 (11th Cir. 2002). The broad discretion given to the court includes the management of pretrial activities such as discovery and scheduling. Id. (citing Johnson v. Bd. of Regents of Univ. Georgia, 263 F.3d 1234, 1269 (11th Cir. 2001)).

The Plaintiff moves for an enlargement of time of seven (7) months to respond to the Defendants' Motions for Summary Judgment and three (3) months to in order to frame a response to all of the Defendants' discovery motions. As grounds, the Plaintiff states that he is proceeding *pro se* and cannot get proper responses anytime sooner. The Plaintiff's *pro se* status is not sufficient good cause to grant such an extensive enlargement of time. Although the Plaintiff is proceeding *pro se* the Plaintiff is reminded that despite his *pro se* status, it is mandatory that he participate and cooperate in discovery, comply with the deadlines established in the Court's Scheduling Order, respond properly to motions, and proceed in accordance with the Federal and Local Rules. Loren v Sasser, 309 F.3d 1296, 1304 (11th Cir. 2002) (holding that even *pro se* parties must follow procedures). The Plaintiff responds that the Constitution takes precedence over the Federal

Rule and that his Constitutional right to a jury trial is being threatened. The Plaintiff's response is frivolous. He has been allowed to participate in the process and nothing is prohibiting him from receiving a jury trial on his Complaint. Furthermore, Congress authorized the judiciary to prescribe the Federal Rules of Civil Procedure for the Federal Courts. 28 U.S.C. §§ 2071-2077. The Supreme Court of the United States prescribes the rules under the review of Congress. 28 U.S.C §§ 2074, 2075. Thus, the Federal Rules are not in conflict with the Constitution but are in accord with the requirements regarding trials as guaranteed by the Constitution. As a result, the Plaintiff's argument which pits the Federal Rules against his right to a fair jury trial lacks merit.

Further, the Court previously granted the Plaintiff an enlargement of time to file responses to the Motions for Summary Judgment. On April 28, 2008, the Plaintiff filed a Motion (Doc. # 163) stating that he only needed an additional twenty-five (25) days in which to respond to the Defendants' Motions for Summary Judgment. On May 9, 2008, the Court allowed an extension of time (Doc. # 165) up to and including May 23, 2008, to complete his responses. The Court is not unopposed to additional time however, seven months is unreasonable. Thus, the Court will allow an additional twenty (20) days until June 26, 2008 for the Plaintiff to file his responses.

### (3) Motion to Appoint an Attorney

The Plaintiff move the Court to appoint counsel to aide him in responses to the Motions for Summary Judgment. "The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation." Lassiter v. Dept. of Social Services, 452 U.S. 18, 25 (1981). The present action is civil in nature and does not affect the Plaintiff's physical liberty. The constitutional rights of an accused in a criminal proceeding differ

substantially from those of a plaintiff in a civil action. The stringent standards of appointment and effective assistance of counsel mandated by the Sixth Amendment and Federal Rule of Criminal Procedure 44 do not apply to civil proceedings. United States v. Rogers, 534 F.2d 1134 (5th Cir. 1976), cert. denied, 429 U.S. 940 (1976).<sup>1</sup>

While an indigent litigant has no right to appointed counsel when his physical liberty is not implicated, the “fundamental fairness” requirement in the due process clause of the Fourteenth Amendment of the United States Constitution may mandate appointment of counsel in “exceptional circumstances.” Lassiter, 452 U.S. at 31. When exceptional circumstances are present, the Court has the discretion under 28 U.S.C. § 1915(e)(1)<sup>2</sup> to request that an attorney represent a litigant proceeding *in forma pauperis*. Although there is no comprehensive definition for what constitutes “exceptional circumstances,” the Court should consider the following factors: (1) the type and complexity of the case; (2) the abilities of the individual bringing it; (3) whether the individual is in the position to adequately investigate his case; and (4) whether the evidence will consist mostly of conflicting testimony so as to require skill in cross-examination. Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982) (citations omitted). However, “the fact that a *pro se* litigant lacks the skills and knowledge of a trained attorney does not require that he be afforded counsel, for if this were the standard

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<sup>1</sup>In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

<sup>2</sup>Section 1915(d) does not authorize a federal court to require an unwilling attorney to represent an indigent litigant in a civil case. Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296 (1989).

virtually every *pro se* litigant would be entitled to counsel.” Branch v. Cole, 686 F.2d 264 (5th Cir. 1982).

In the present case, the Court finds no exceptional circumstances at this juncture<sup>3</sup> necessitating appointment of counsel and will, therefore, deny Plaintiff's motion for appointment of counsel. The Court has considered the nature of the case, its complexity, and Plaintiff's ability to prosecute his claim. This is not a complex case and does not raise any new or novel issues or facts. Dean v. Barber, 951 F.2d 1210, 1216 (11th Cir. 1992). From the pleadings filed in this case by the Plaintiff, the Plaintiff has shown the ability to litigate this action *pro se*.

\_\_\_\_\_The Plaintiff should note that his *pro se* Complaints has been held to a less stringent standard than formal pleadings drafted by the Defendants' lawyers. Erickson v. Pardus, 127 S.Ct. 2197 (2007). This Court has been liberal in reviewing the *pro se* Plaintiff's Complaint, giving him leave to amend his complaint five (5) times, and granting generous extensions of time to comply with court orders. Consequently, the Court's liberal construction of *pro se* Plaintiff's Complaint, coupled with the Plaintiff's apparent ability to litigate this action *pro se*, convinces the Court that the appointment of counsel is not necessary in this case.

(4) Deposition Transcripts at no Charge to the Plaintiff

The Plaintiff also requests the Court to Order the Defendants to release all of the deposition transcripts to him at no charge. The Plaintiff is a civil litigant in this matter and there is no good cause to grant the request. If the Plaintiff needs the deposition transcripts he may purchase them from the various court reporters who transcribed the depositions.

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<sup>3</sup>The Court will reconsider whether counsel should be appointed at a future time, i.e. if this case progresses to an evidentiary hearing or trial.

Accordingly, it is now

**ORDERED:**

The Plaintiff Christian Meister's Motion to Strike All Defendants' Motions for Summary Judgment, Motion to Stay this Litigation for a Period of Six Months, Motion for Enlargement of Time, Motion to Appoint an Attorney, Motion to Order All Defendants to Release Any All Deposition Transcripts at no Charge to the Plaintiff (Doc. #172 ) **GRANTED in part, DENIED in part, and RESERVED ruling in part.**

(1) The Plaintiff Christian Meister's Motion to Stay this Litigation for a Period of Six Months is **DENIED.**

(2) The Plaintiff Christian Meister's Motion for Enlargement of Time is **GRANTED** to the extent that the Plaintiff's Responses to the Defendants' Motions for Summary are due on **June 26, 2008.** Further request for enlargement of time to respond to the Defendants' Motions for Summary Judgment will not receive favorable consideration absent sufficient good cause.

(3) The Plaintiff Christian Meister's Motion to Appoint an Attorney is **DENIED.**

(4) The Plaintiff Christian Meister's Motion to Order All Defendants to Release Any and All Deposition Transcripts at no Charge to the Plaintiff is **DENIED.**

(5) The Plaintiff Christian Meister's Motion to Strike All Defendants' Motions for Summary Judgment is **RESERVED** for the District Court's determination.

**DONE AND ORDERED** at Fort Myers, Florida, this   6th   day of June, 2008.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES MAGISTRATE JUDGE**

Copies: All Parties of Record