

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Michael T. Hayes

Plaintiff,

v.

Corrections Corporation of America
(CCA), et al.,

Defendant.

Case No. 1:09-cv-00122-BLW

**MEMORANDUM DECISION AND
ORDER RE MOTION TO APPOINT
AMICUS**

INTRODUCTION

Pending before the Court is plaintiff Michael T. Hayes' Motion to Appoint the Department of Justice and United States Attorney for the District of Idaho as Amicus Curiae (Dkt. 164). For the reasons explained below, the Court will deny the motion.

BACKGROUND

Hayes was incarcerated at the Idaho Correctional Center, a private prison, from approximately 2004 through 2012. On April 14, 2007, Hayes was beaten and robbed by two other inmates. In March 2009, Hayes sued under 42 U.S.C. § 1983, alleging that the

prison and various prison employees violated his Eighth Amendment rights. After this Court's summary judgment decisions, the only remaining claims are Hayes' failure-to-protect claims against prison employees Brian Doser and Justin Acosta. Trial is set for March 11, 2013.

ANALYSIS

The decision to appoint an amicus is discretionary. *See e.g., Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995). Plaintiff should recognize that there is a distinction between counsel appointed to represent the plaintiff and amicus counsel appointed to assist the court. *See e.g., United States v. Dougherty*, 473 F.2d 1113, 1125 n.18 (D.C. Cir. 1972).

Plaintiff's request is most unusual. In the Court's experience, a third party whose interest may be affected by the outcome of a proceeding may request leave to participate as amicus curiae. The Court has not been advised that the Department of Justice or the U.S. Attorney for the District of Idaho desires to participate in this proceeding. Additionally, the Court does not believe appointment of amicus would assist the Court in resolving this case. The Court will therefore deny the motion.

ORDER

Plaintiff's Motion to Appoint the Department of Justice and United States Attorney for the District of Idaho as Amicus Curiae (Dkt. 164) is **DENIED**.



DATED: February 20, 2013

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief Judge
United States District Court