

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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| JOSEPH W. BUECHEL, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil No. 08-cv-132-JPG-CJP |
| |) | |
| UNITED STATES OF AMERICA, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Joseph W. Buechel's appeal of Magistrate Judge Clifford J. Proud's July 16, 2009, order denying appointment of counsel (Doc. 38). The Court also considers two of Buechel's other filings (Docs. 39 & 41) which also address the appointment issue, and his motion for leave to appeal *in forma pauperis* (Doc. 40).

A district court reviewing a magistrate judge's decision on nondispositive issues should only modify or set aside that decision if it is clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). Accordingly, the Court will affirm Magistrate Judge Proud's decision unless his factual findings are clearly erroneous or his legal conclusions are contrary to law. *Id.* The Court may, however, *sua sponte* reconsider any matter determined by a magistrate judge. *Schur v. L.A. Weight Loss Ctrs., Inc.*, No. 07-3761, 2009 WL 2477642, * 5 (7th Cir. Aug. 14, 2009).

The Court has reviewed Magistrate Judge Proud's order and finds that it is not clearly erroneous or contrary to law. However, the Court finds that appointment of counsel is advisable in light of Buechel's limited abilities, his attempts to find counsel and the impediments that prevent him from doing so, and the requirement he obtain a physician's certificate of merit before proceeding on Count 2. Accordingly, the Court **VACATES** Magistrate Judge Proud's

July 16, 2009, order (Doc. 29) and **APPOINTS** J. Kevin McCall, Jenner & Block, LLC, 330 North Wabash Avenue, One IBM Plaza, 43d Floor, Chicago, Illinois 60611-7603, to represent Buechel in this action. Buechel's appeal of Magistrate Judge Proud's order (Doc. 38) and his two other filings (Docs. 39 & 41) are rendered **MOOT** by this order.

The Court further **ORDERS** that Buechel shall have up to and including October 23, 2009, to respond to the pending motion to dismiss (Doc. 33) and shall have up to and including December 11, 2009, to file an amended complaint adequately pleading Count 2, his medical negligence/malpractice claim. If the plaintiff fails to amend his pleading to adequately plead Count 2, the Court will dismiss Count 2 with prejudice.

Finally, Buechel's motion for leave to appeal *in forma pauperis* (Doc. 40) is **MOOT** in light of the Court of Appeals' September 14, 2009, order dismissing the appeal and waiving the appellate filing fee.

IT IS SO ORDERED.

DATED: September 22, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
U. S. DISTRICT JUDGE