

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALLAN COOKE EPPERSON

CIVIL ACTION

VERSUS

NO: 11-381

PUBLIC DEFENDER OFFICE, MARIA M.
CHAISSON, ATTORNEY, ET AL.

SECTION: R(3)

ORDER

The Court, having reviewed *de novo* the complaint, the record, the applicable law, the Magistrate Judge's Report and Recommendation,¹ and plaintiff's objections thereto,² hereby approves the Report and adopts it as its opinion.

Additionally, the Court denies plaintiff's request for appointment of counsel because that request is now moot. Further, even if plaintiff's request were not moot, section 1983 plaintiffs do not generally have a right to counsel, and the court is not required to appoint counsel for an indigent plaintiff unless the case presents "exceptional circumstances." *Dung Ngoc Huynh v. Baze*, 317 Fed.Appx. 397, 399 (5th Cir. 2009). In determining whether extraordinary circumstances exist, courts consider "(1) the type and complexity of the case; (2) the plaintiff's ability to adequately present and investigate the case; (3) the presence of a majority of evidence consisting of

¹ R. Doc. 11.

² R. Doc. 12.

conflicting testimony which requires skill in the presentation of evidence and in cross-examination; and (4) the likelihood that the appointment will benefit the plaintiff, the defendants, and the court by shortening the length of the trial and assisting in a just determination of the case." *Id.* (citing *Parker v. Carpenter*, 978 F.2d 190, 193 (5th Cir. 1992)). Here, plaintiff's claims are not complex, he had the opportunity to present his claims in a hearing before the Magistrate Judge, his claims do not require extensive investigation, the evidence does not consist of conflicting testimony, and the Court has disposed of the case before trial. Appointment of counsel would therefore be unwarranted even if the issue were not moot.

Accordingly,

IT IS ORDERED that plaintiff's suit is DISMISSED WITH PREJUDICE as frivolous, for failure to state a claim on which relief may be granted, and/or for seeking monetary damages against a defendant who is immune from such relief.

IT IS FURTHER ORDERED that plaintiff's request for appointment of counsel is DENIED AS MOOT.

New Orleans, Louisiana, this 28th day of April, 2011.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE