IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

KELVIN A. CANADA,	)	
Plaintiff	)	Civil Action No.: 7:11cv00569
	)	
v.	)	
	)	**ORDER**
WALTER DAVIS, et al.,	)	By: PAMELA MEADE SARGENT
Defendants	)	United States Magistrate Judge

This matter is before the undersigned on the following motions filed by the pro se plaintiff, Kelvin A. Canada:

1. Motion To Compel Discovery, (Docket Item No. 48):
2. Motion for Subpoenas of Witnesses, (Docket Item No. 49); and
3. Motion for Appointment of Counsel, (Docket Item No. 50).

Based on the arguments and representations of the plaintiff, it is **ORDERED** as follows:

1. Motion To Compel Discovery, (Docket Item No. 48), is **GRANTED in part and DENIED in part**. If they have not previously done so, the defendants shall make a copy of the plaintiff's medical records, which they previously have filed with the court, available for review by the plaintiff within 14 days of the date of entry of this Order. The Clerk's Office shall print a copy of the plaintiff's medical records

previously filed with the court, (Docket Item No. 41, Att. Nos. 2-15), and have them available for the plaintiff's use at trial. The Clerk's Office also shall have the handheld video footage previously filed with the court by the defendants available for the plaintiff's use at trial. The defendants also shall file a copy of VDOC O.P. 420.2 with the court within 14 days of the date of entry of this Order;

2. Motion for Subpoenas of Witnesses, (Docket Item No. 49), is **GRANTED in part and taken under advisement in part**. The Clerk's Office shall issue witness subpoenas for the following witnesses for the December 6, 2012, Trial:

   a. Nurse T. Cox;

   b. Head Nurse Vicki Phipps;

   c. Dr. John Z'allessandor; and

   d. Dr. Timothy McBride.

   The plaintiff is reminded that subpoenas for the attendance of noninmate witnesses cannot be enforced without proper prepayment of the appropriate witness and mileage fees. *See* FED. R. CIV. P. 45. The Clerk's Office will not undertake to effect personal service of any witness subpoenas through the United States Marshals Service until such time as the appropriate service fees have been tendered.

   The plaintiff shall provide the court with an explanation as to why inmate witnesses Donell Blount, Michael Boone and Kevin Johnson are necessary witnesses at trial.

3. Motion for Appointment of Counsel, (Docket Item No. 50), is **DENIED**. It should be noted that prisoners have no statutory right to

counsel in civil rights cases; in fact, there is a presumption against appointment of counsel in such cases except in exceptional circumstances. *See United States v. $27,000.00*, 865 F. Supp. 339, 340 (S.D.W.Va., 1994). Nonetheless, because the plaintiff in this case is proceeding in forma pauperis, the court may, in its discretion, request that an attorney represent the plaintiff. *See* 28 U.S.C.A. §1915(e)(1) (West 2006). The factors to be considered by the court in deciding whether to request an attorney to represent an indigent party include the merits of the indigent's claim and the capability of the indigent litigant to present the case. *See Gordon v. Leeke*, 574 F.2d 1147, 1153 (4th Cir. 1978). Based on my consideration of these factors with regard to the facts and circumstances of this case, I find that it is not in the interest of justice to request counsel for the plaintiff. In particular, the factual and legal issues presented by this case are not complicated. Moreover, the plaintiff, through his filings with the court to date, has demonstrated his ability to adequately represent his interests in this case.

The Clerk shall certify a copy of this Order to all counsel of record and to the pro se plaintiff.

ENTERED: October 23, 2011.

/s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE