

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROOSEVELT L. WHITE,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 18-261WES
	:	
MAGISTRATE JOHN F. MCBURNEY, III,:		
PETER C. KILMARTIN, KIMBERLY	:	
AHERN, ROBERT F. MCNELIS,	:	
JEFFREY ACETO, PATRICIA COYNE-	:	
FAGUE, JAMES WEEDEN, MATTHEW	:	
KETTLE, A.T. WALL, BILLY BAGONES,:		
NUNO FIGUREDIO, STATE OF RHODE	:	
ISLAND, and DEPARTMENT OF	:	
CORRECTIONS,	:	
Defendants.	:	

**MEMORANDUM AND ORDER
GRANTING IFP MOTION AND DENYING MOTION FOR COUNSEL**

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On May 9, 2018, Plaintiff Roosevelt L. White, an inmate at the Adult Correctional Institutions (“ACI”), filed a *pro se* handwritten complaint against the State of Rhode Island; the Rhode Island Department of Corrections (“RIDOC”); a Rhode Island judge, Magistrate John F. McBurney, III; two Rhode Island prosecutors, Attorney General Peter C. Kilmartin and Special Assistant Attorney General Kimberly Ahern; a private attorney who acted as Plaintiff’s defense counsel, Robert F. McNelis; and seven senior RIDOC officials. ECF No. 1 at 1. Along with his complaint, Plaintiff filed a motion for leave to proceed *in forma pauperis* (“IFP”) and a motion to appoint counsel, ECF Nos. 2, 3, both of which have been referred to me for determination.

I. IFP Motion

Based on my review of the IFP application, I conclude that Plaintiff has satisfied the requirements of 28 U.S.C. § 1915(a)(2). Accordingly, his IFP motion is granted. Because

Plaintiff is a prisoner, he is still required to pay the statutory filing fee of \$350.00 for this action. Pursuant to the Prison Litigation Reform Act of 1995 (“the Act”), adopted April 26, 1996, and codified at 28 U.S.C. § 1915(b), a prisoner seeking to file in forma pauperis must pay as an initial filing fee the greater of twenty percent (20%) of the average monthly deposits to his account or the average monthly balance for the six months prior to the filing of his Complaint. See 28 U.S.C. § 1915(b)(1). Subsequently, a prisoner must pay monthly twenty percent (20%) of the previous month’s balance in his account. See 28 U.S.C. § 1915(b)(2).

The monthly deposits to Plaintiff’s account during the six-month period prior to the filing of the Complaint averaged \$58.74. His average monthly balance during the relevant period was \$54.85. Accordingly, Plaintiff is required to pay as an initial filing fee \$11.75 ($\$58.74 \times 20\% = \11.75). Subsequently, the ACI is directed to forward to the Court each month twenty percent (20%) of the previous month’s balance in Plaintiff’s account each time the amount in the account exceeds \$10.00 until Plaintiff has paid the entire filing fee of \$350.00. Plaintiff shall make his initial filing fee of \$11.75 within thirty (30) days of the Court’s adoption of my complaint screening report and recommendation issued today.

II. Motion to Appoint Counsel

Based on my review of the motion to appoint counsel, I find that it should be denied without prejudice; my reasons follow. There is no constitutional right to free counsel in a civil case. DesRosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991); see Maroni v. Pemi-Baker Reg’l Sch. Dist., 346 F.3d 247, 257 (1st Cir. 2003); King v. Greenblatt, 149 F.3d 9, 14 (1st Cir. 1998); Barkmeyer v. Wall, C.A. No. 09-430S, 2009 WL 3046326, at *1 (D.R.I. Sept. 22, 2009). Further, there is no funding mechanism for appointed counsel in civil cases; therefore, the matter is subject to the district court’s broad discretion, to be exercised in light of the difficulties in

rationing the precious resource of volunteer lawyer services. Sai v. Transp. Sec. Admin., 843 F.3d 33, 35 (1st Cir. 2016). “To qualify for this scarce resource, a party must be indigent and exceptional circumstances must exist such that the denial of counsel will result in fundamental unfairness impinging on the party’s due process rights.” Choksi v. Trivedi, 248 F. Supp. 3d 324, 328 (D. Mass. 2017) (citing DesRosiers, 949 F.2d at 23); see Cookish v. Cunningham, 787 F.2d 1, 2 (1st Cir. 1986) (“an indigent litigant must demonstrate exceptional circumstances in his or her case to justify the appointment of counsel”). To determine whether there are exceptional circumstances sufficient to warrant the appointment of counsel, “a court must examine the total situation, focusing, *inter alia*, on the merits of the case, the complexity of the legal issues, and the litigant’s ability to represent himself.” DesRosiers, 949 F.2d at 24. Just because a plaintiff alleges sufficient facts to state a claim in the complaint does not in and of itself require the appointment of counsel. Cookish, 787 F.2d at 2-3; Childs v. Duckworth, 705 F.2d 915, 922 (7th Cir. 1983).

Pivotal to the determination whether *pro bono* counsel should be appointed is the merits of the case. See Choksi, 248 F. Supp. 3d at 328. Having reviewed Plaintiff’s complaint for screening, at least at this early phase, I find that the retaliation claim against defendants Figuredo and Bagones has insufficient heft to clear the extraordinary-circumstances bar. Nor does it appear that Plaintiff lacks the ability to represent himself; to the contrary, Plaintiff’s pleading establishes that he was able coherently to present his claim to Rhode Island Legal Services, the Rhode Island Bar Association Pro Bono Program and an array of attorneys, who responded but declined to be involved with the case. ECF Nos. 1-7 to 1-11. Nor does his motion suggest any other unusual circumstances that would warrant the appointment of a *pro bono* attorney.

Without extraordinary circumstances to justify an appointment from the Court's *pro bono* panel, Plaintiff's motion to appoint counsel (ECF No. 4) is denied without prejudice.

III. CONCLUSION

Based on the foregoing, Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) is granted. However, the Clerk should not initiate the process of arranging for summonses to serve the two remaining defendants (Nuno Figuredo and Billy Bagones) until after Plaintiff has submitted his initial filing fee, which is due thirty (30) days after the Court's adoption of my report and recommendation issued today. See 28 U.S.C. §§ 1915(e)(2)(B)(ii) & (iii), 1915A. Plaintiff's motion to appoint counsel (ECF No. 4) is denied without prejudice.

So ordered.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
June 6, 2018