

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR THE COUNTY OF NEW CASTLE**

**M. Jane Brady**  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street  
Suite 10400  
Wilmington, DE 19801  
Phone: (302) 255-0661  
Facsimile: (302) 255-2273

February 28, 2011

Chad J. Toms, Esq.  
Whiteford Taylor Preston, LLC  
1220 North Market St., Suite 608  
Wilmington, DE 19801

Julie M. Donoghue, Esq.  
Delaware Department of Justice  
820 N. French St., 6<sup>th</sup> Floor  
Wilmington, DE 19801

Daymien J. Roberts  
**SBI # 003**  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977  
**STATE MAIL CODE N440**

**RE: *Daymien J. Roberts v. Correctional Medical Services, Inc., et. al.***  
***Civil Action No. 10C-08-250***

Dear Counsel and Mr. Roberts:

On September 14, 2010, Plaintiff, Daymien J. Roberts, an inmate of the James T. Vaughn Correctional Center, filed this medical malpractice action against the named Defendants. Defendants subsequently filed motions to dismiss, and a hearing was scheduled. At the hearing, Plaintiff was informed that in order to pursue his claim he needed to comply with 18 *Del. C.* § 6853, and submit an Affidavit of Merit. Plaintiff was given until February 25, 2011 to do so. On February 1, 2011, Plaintiff, filed the instant Motion to Appoint Counsel, in which he claims he needs appointment of counsel because of the complexity of the issues involved, so that he can properly investigate the facts, and so that he may properly submit an Affidavit of Merit pursuant to 18 *Del. C.* 6853. In addition, Plaintiff claims that he has had “issues getting [access] to the law library.”

This Court has the “inherent authority to appoint counsel for an indigent prisoner in a civil suit if it demonstrated that the State has not afforded ‘meaningful access’ to the courts by other alternatives.”<sup>1</sup> A civil litigant has “meaningful access” when he or she has “either access to an adequate law library or legal assistance in the

---

<sup>1</sup> *Vick v. Dept. of Correction*, 1986 WL 8003, at \*2 (Del. Super. Apr. 14, 1986).

preparation of complaints, appeals, petitions, etc., though the State is vested with discretion to select the method by which to implement this constitutional guarantee.”<sup>2</sup>

In this case, the Court is satisfied that Plaintiff has had “meaningful access” for several reasons. First, Plaintiff’s filings, including, the instant motion, a Complaint, and responses to the Defendants’ motions to dismiss demonstrate Plaintiff’s ability to present legal arguments and citations to the Court. Second, Plaintiff complains that he has had problems obtaining access to the prison library, but there is no claim that his access has been completely deprived. An “allegation that the prison library is only accessible on a very limited basis, without, greater specificity, is insufficient to defeat the State’s strong countervailing interest in maintaining order and discipline in its penal institutions.”<sup>3</sup>

Finally, Plaintiff has not demonstrated to the Court any efforts to obtain private counsel in this matter. Plaintiff has indicated that he is willing to “sign a standard contingency fee agreement.” If he has a valid legal claim, Plaintiff may be able to find private counsel to represent him in this matter, or contact the Delaware Bar Association, or a non-profit legal services organization for assistance. For the foregoing reasons, Plaintiff’s Motion is **DENIED**.

On December 21, 2010, the Court granted Plaintiff a sixty day extension to file his Affidavit of Merit. Pursuant to 18 *Del. C.* § 6853(a)(2), the Court may only grant a “single 60- day extension.” The denial of Plaintiff’s instant Motion will not provide a basis for extending the February 25, 2011 deadline previously set by the Court.

**IT IS SO ORDERED.**

\_\_\_\_\_/s/\_\_\_\_\_  
**M. Jane Brady**  
Superior Court Judge

---

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.