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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

Jubel Dean Perkins)
 PLAINTIFF)
 vs.)
 Heith Daniels)
 Felipe Solis)
 P. Rider)
 Dora Schriro)
 DEFENDANT(S))

Civil Action No.
 CV-08-1730-PHX-SRB(ECU)

MEMORANDUM OF LAW IN SUPPORT OF THE
 PLAINTIFF'S MOTION FOR THE APPOINTMENT OF COUNSEL

Statement of the Case

This is a civil rights case Filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims For the unconstitutional use of defamatory comments, slander and libel. The denial of due process in subsequent administrative remedies to resolve the issue by the plaintiff. And the denial of due process in the subsequent and indefinite punitive segregation resulting from the incident. The plaintiff seeks damages as to all claims and an injunction to release plaintiff from segregation and expunge the disciplinary convictions described in complaint.

Statement of Facts

The complaint alleges that the plaintiff was defamed and slandered by an ACI partner contract work crew supervisor. The plaintiff was then subsequently fired and placed in punitive segregation for saying he could not be spoken to in that matter. The plaintiff was convicted at a disciplinary hearing for threatening staff and a maximum custody placement hearing was conducted as a result.

1 The plaintiff made numerous requests to informally resolve the
2 staff misconduct that was admitted to in witness statements
3 at the disciplinary hearing. No investigation was ever conducted and the plaintiff's
4 attempts to file a grievance and grievance appeal were subsequently denied
5 and unprocessed.

6 7 ARGUMENT

8 THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF.

9 In deciding whether to appoint counsel for an indigent litigant, the court
10 should consider "the factual complexity of the case, the ability of the
11 indigent to investigate the facts..., the ability of the indigent to investigate
12 the facts and to present his claim and the complexity of the legal issues."

13 *Abdullah v. Gunter*, 949 F.2d 1032, 1035 (8th Cir. 1991) (citation omitted),
14 cert. denied, 112 S.Ct. 1995 (1992). In addition, courts have suggested that the
15 most important factor is whether the case appears to have merit.

16 *Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 173 (2d Cir. 1989) Each of
17 those factors weighs in favor of appointing counsel in this case.

18
19 (1) FACTUAL COMPLEXITY. The plaintiff alleges that ~~an~~ his boss, an
20 ACI partner contract work crew supervisor verbally abused him and attempted to get
21 three other inmates to join him in the abuse. Plaintiff asserts that several prison
22 supervisors were on notice of the staff misconduct and never conducted an
23 investigation, despite witness statements being made admitting to the misconduct.
24 The plaintiff was placed in punitive segregation for an indefinite time period
25 and lost his job as a result of the incident. Finally, he claims denial
26 of due process by a CO III and grievance coordinator and a deputy warden.
27 The sheer number of claims and defendants makes this a factually complex
28 case.

1 (2) THE PLAINTIFF'S ABILITY TO INVESTIGATE. The plaintiff is
2 locked up in punitive segregation and has no ability to investigate the facts.
3 For example, he is unable to identify, locate and interview the inmates
4 who were also working at ACI on the date of the incident. He is in the
5 same situation as an inmate who has been transferred to a different institution,
6 a factor that several courts have cited in appointing counsel.

7 ~~Abdullah v. Gunter~~, ~~949 F.2d 1032~~ Tucker v. Randall, 948 F.2d 388, 391-92
8 (7th Cir. 1991); Gatson v. Coughlin, 679 F. Supp. 270, 273 (W.D.N.Y. 1988);
9 Armstrong v. Snyder, 103 F.R.D. 96, 105 (E.D. Wis. 1984). In addition, this case
10 will require considerable discovery concerning the identity of witnesses, the officers'
11 reports and statements about the incident, and the history of the defendants.
12 See Tucker v. Dickey, 613 F. Supp. 1124, 1133-34 (W.D. Wis. 1985) (need for discovery
13 supported appointment of counsel).

14
15 (3) THE ABILITY OF THE INDIGENT TO PRESENT HIS CLAIM. The
16 plaintiff is an indigent prisoner with no legal training, a factor that supports the
17 appointment of counsel. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984).
18 In addition, he is confined to segregation with very limited access to legal materials.
19 Rayes v. Johnson, 969 F.2d 700, 703-04 (8th Cir. 1992) (citing lack of ready
20 access to a law library as a factor supporting appointment of counsel).

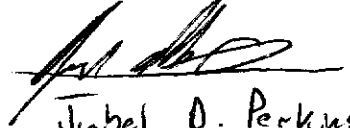
21
22 (4) LEGAL COMPLEXITY. The large number of defendants, some
23 of whom are supervisory officials, presents complex legal issues of determining
24 which defendants were sufficiently personally involved in the constitutional
25 violations to be held liable. In addition, the plaintiff has asked for a jury trial,
26 which requires much greater legal skills than the plaintiff has or can develop.
27 See Abdullah v. Gunter, 949 F.2d 1032, 1036 (8th Cir. 1991) (citing jury demand
28 as a factor supporting appointment of counsel), cert. denied, 112 S. Ct. 1995 (1992)

1 (5) MERIT OF THE CASE. The plaintiff's allegations, if proved,
2 clearly would establish a constitutional violation. Writing down "Perkins is
3 a Dumbass" and showing it to others is Libel per se, in that it is actionable
4 in itself. The complaint clearly states a violation of defamation and slander.
5 The unjustified denial of an investigation into the alleged staff misconduct,
6 the denial and unprocessed grievance and appeal are all violations of
7 due process. *Ponte v. Real*, 471 U.S. 491, 497, 105 S. Ct. 2192 (1985);
8 *Superintendent v. Hill*, 472 U.S. 445, 457, 105 S. Ct. 2768 (1985);
9 *Dyson v. Kocik*, 689 F.2d 466, 467-68 (3d Cir. 1982)
10 On its face, then, this is a meritorious case.

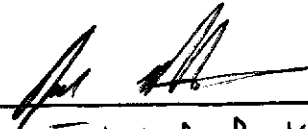
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12 CONCLUSION

13 For the foregoing reasons, the court should grant the plaintiff's
14 motion and appoint counsel in this case

15
16 Dated This 9th day of Sep., 2008


17
18
19 By 
20 Jubel O. Perkins
21 PLAINTIFF

1 Dated This 9th day of Sep., 2008

2
3 By 
4 Jubel D. Perkins
5 PLAINTIFF

6 Original of the foregoing
7 Filed this 9th day of
8 Sep., 2008
9

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22 By 
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