

refunded to the plaintiff if the case is dismissed upon an initial screening or anytime thereafter. The Clerk shall send a copy of this Order to the treasurer of the facility having custody of the plaintiff to facilitate any request by the plaintiff for the filing fee payment to be forwarded to the Court.

3. The motion for appointment of counsel (#2) is DENIED WITHOUT PREJUDICE. Under 28 U.S.C. § 1915(e)(1), the Court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. §1915(e)(1). However, a civil plaintiff lacks a constitutional right to free counsel. *See DesRosiers v. Moran*, 949 F.2d 15, 23 (1st Cir. Cir. 1991). To qualify for appointment of counsel, 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. *See id.* To determine whether there are exceptional circumstances sufficient to warrant the appointment of counsel, a court must examine the total situation, focusing on the merits of the case, the complexity of the legal issues, and the litigant's ability to represent himself. *See id.* at 24.

Here, because the filing fee has not been resolved, summonses have not issued, and the defendants have not been required to respond, the Court cannot yet determine whether this case presents exceptional circumstances that would justify the appointment of pro bono counsel. The Court therefore denies the motion without prejudice to renewal after the defendants have responded to the complaint.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: March 5, 2013