

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MOLLY TSAI,

Plaintiff,

v.

ROBERT A. MCDONALD, Secretary,
Department of Veterans Affairs, Agency,

Defendant.

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C.A. No. 15-11676-ADB

ORDER

BURROUGHS, D.J.

1. The motion for leave to proceed *in forma pauperis* (#3) is GRANTED.

2. The Clerk shall issue a summons and the United States Marshal shall serve a copy of the summons, complaint, and this order upon the defendant as directed by plaintiff with all costs of service to be advanced by the United States. Service must be completed within 120 days of the date of this Order.

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. 1991). In order 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 herself. *See id.* at 24. Because the defendant has not yet responded to the complaint, the Court cannot yet determine whether this case presents exceptional circumstances that would justify the appointment of pro bono counsel. The motion is denied without prejudice to renewal after the defendant has been served with and responded to the complaint. The plaintiff shall include in any renewed motion for counsel a summary of her efforts to obtain counsel, including any attempts to find an attorney that would represent her on a contingency fee basis.

SO ORDERED.

Dated: May 4, 2015

/s/ Allison D. Burroughs
ALLISON D. BURROUGHS
DISTRICT JUDGE