UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GLORIA SHALDERS, et al., Plaintiff,	
v.	Civil Action No. 22-12231-NMG
DEPARTMENT OF CHILDREN AND FAMILIES., Defendants.	

ORDER

GORTON, J.

Pro se litigant Gloria Shalders brings this action against the Massachusetts Department of Children and Families ("DCF"), a judge of the Commonwealth's Probate and Family Court (Jennifer Malia), certain state employees, and a private attorney who briefly represented Shalders. Shalders alleges that the defendants violated her state and federal rights with regard to DCF's case concerning her minor children and resulting Family Court proceedings.

Now pending before the Court are the motions to dismiss of the state defendants (Docket # 20) and of Carpe (Docket # 18) and Shalders's motions to amend the complaint and for appointment of counsel (Docket ## 30, 31). Upon review of the motions, the Court hereby orders:

1. The motion to amend (Docket No. # 30) is **ALLOWED**. The Court recognizes the defendants' futility argument in opposition to the motion to amend. However, allowing Shalders to file her amended complaint at this juncture does not prejudice the defendants any more than it would have if she had filed the amended pleading as a matter of right by May 5, 2023. See Fed. R. Civ. P. 15(a)(1)(B). At that time, as now, the defendants' motions to dismiss were pending and discovery had not commenced. Although Shalders's pro se status does not exempt her from compliance with the Federal Rules of Civil Procedure or this Court's Local Rules, given the lack of prejudice to the defendants, the Court will afford Shalders some leeway and allow the motion.

If Shalders seeks further amendment of her pleading, she may do so only upon leave of the Court. See Fed. R. Civ. P. 15(a)(2). Any amended pleading filed without leave of court will be stricken from the docket.

2. The motions to amend (Docket ## 18, 20) ~~shall~~ are **DENIED** without prejudice as moot.

3. Although the Court is allowing the motion to amend, the following claims in the amended complaint are DISMISSED[1]:

[1] A court has the inherent power to dismiss frivolous claims, regardless of the status of the filing fee. See Fitzgerald v. First E. Seventh St. Tenants Corp., 221 F.3d 362, 363 (2d Cir. 2000) (per curiam); Brockton Sav. Bank v. Peat, Marwick,

(i) All claims against DCF are **DISMISSED**. States (including their departments and agencies) are not subject to suit under 42 U.S.C. § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). In addition, the Eleventh Amendment of the United States Constitution bars suits in federal courts against a State, its departments and its agencies, unless the State has consented to suit or Congress has overridden the State's immunity. See Virginia Office for Protection & Advocacy v. Stewart, 563 U.S. 247, 253-54 (2011). Here, the Court cannot discern any claim for relief against DHCD for which the Commonwealth of Massachusetts has waived its immunity or Congress has overridden it.

(ii) All claims against Judge Melia are **DISMISSED**. Under the doctrine of judicial immunity, judges are immune "from liability for damages for acts committed within their judicial jurisdiction." Pierson v. Ray, 386 U.S. 547, 554 (1967). As all of Shalder's allegations against Judge Melia relate to her judicial actions, Shalders has failed to state a claim for damages against Judge Melia. Any claims against Judge Melia for injunctive relief fare no better. A judge enjoys immunity from claims for injunctive relief unless "a declaratory decree was

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Mitchell & Co., 771 F.2d 5, 11 n.5 (1st Cir. 1985). In legal parlance, a claim is objectively "frivolous" when it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Neither circumstance exists in this action.

4. The motion for appointment of counsel (Docket # 31) is **DENIED**.

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). The appointment of counsel for an indigent party is only required when "exceptional circumstances" exist such that the denial of counsel will result in fundamental unfairness impinging on the party's due process rights. See id. In considering whether the appointment of counsel is necessary, the Court considers the "total situation," including "the merits of the case, the complexity of the legal issues, . . . the litigant's ability to represent himself," id. at 24, and the efforts the litigant has made to obtain legal representation.

Upon reviewing the pleadings, the Court concludes that exceptional circumstances requiring the appointment of pro bono counsel are not present.

So ordered.

Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated: 11/13/2023