

- (1) the plaintiff's ability to present his or her own case;
- (2) the complexity of the legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigations;
- (4) the amount a case is likely to turn on credibility determinations;
- (5) whether the case will require the testimony of expert witnesses; and
- (6) whether the plaintiff can attain and afford counsel on his own behalf.

Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997) (citing *Tabron*, 6 F.3d at 155-56, 157 n.5).

This list is not exhaustive, but rather provides guideposts for the Court. *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002) (citations omitted). A court's decision to appoint counsel "must be made on a case-by-case basis." *Tabron*, 6 F.3d at 157-58. Additionally, the Third Circuit Court of Appeals has stated that "courts should exercise care in appointing counsel because volunteer lawyer time is a precious commodity and should not be wasted on frivolous cases." *Montgomery*, 294 F.3d at 499 (citing *Parham*, 126 F.3d at 458).

Presently, as an initial matter and regardless of whether or not Plaintiff's claims have merit, the factual and legal issues "have not been tested or developed by the general course of litigation, making [a number of factors] of *Parham*'s test particularly difficult to evaluate." See *Chatterjee v. Philadelphia Federation of Teachers*, 2000 WL 1022979 at *1 (E.D.Pa. July 18, 2000) (stating that unlike *Parham*, which concerned a directed verdict ruling, and *Tabron*, which involved summary judgment adjudication, plaintiff's claims asserted in the complaint and motions "have barely been articulated" and have a distinctive procedural posture). With respect to the *Tabron* factors, Plaintiff has not demonstrated at this stage of the proceeding that pro bono counsel is warranted.

Plaintiff's pro bono application wholly fails to address the *Tabron* factors. In support of his request for pro bono counsel, Plaintiff explains that he needs to be appointed counsel because he is "having trouble looking because [he] is disabled." ECF No. 4 at 3. While the Court

acknowledges Plaintiff's disability may inhibit his mobility, this does not suggest that Plaintiff is otherwise unable to contact legal services. Furthermore, Plaintiff's physical disability is not a factor to be considered in determining whether to appoint pro bono counsel.

An important factor the Court does consider is Plaintiff's ability to afford his own counsel. As noted above, Plaintiff paid the required four hundred dollar filing fee to initiate this action. Unlike most pro se litigants who file cases in this district, Plaintiff did not seek permission to proceed in forma pauperis. Although Plaintiff's ability to pay the Court filing fee may not be an accurate reflection of his finances, absent any additional evidence to the contrary, it appears that Plaintiff has the ability to attain and afford counsel on his own.

While the Court understands Plaintiff's desire to have the Court appoint counsel, the Court notes that the appointment of counsel is a privilege and not a statutory or constitutional right in a civil action. *Brightwell*, 637 F.3d at 192. The Court recognizes that issues may arise throughout the course of this litigation which may raise a question as to Plaintiff's need for counsel. The Court will monitor this issue throughout case management and, as the case progresses, may consider a renewed motion for the appointment of counsel. However, at this stage of the litigation, the Court finds that the appointment of counsel is not warranted. In the event that Plaintiff renews his application for pro bono counsel in the future, the Court instructs Plaintiff to address the Tabron factors set forth above.

The Court having considered this matter pursuant to Fed. R. Civ. P. 78, and for good cause shown;

IT IS on this 17th day of October, 2019,

ORDERED that Plaintiff's Motion for the appointment of pro bono counsel
[ECF No. 4] is **DENIED WITHOUT PREJUDICE**.

s/ James B. Clark, III
JAMES B. CLARK, III
United States Magistrate Judge