

2002 WL 31427349

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United States District Court,
S.D. New York.

Zayd RASHID, Plaintiff,

v.

Kevin MCGRAW, DDS, Sullivan
Correctional Facility, et al., Defendants.

No. 01CIV10996DABHBP.

|
Oct. 29, 2002.

Prisoner who brought § 1983 action against city correctional facility and others, alleging deliberate indifference to serious dental problems, moved for pro bono counsel. The District Court, [Pitman, J.](#), held that claim was sufficiently meritorious to warrant submission of case to panel of pro bono attorneys for possible representation of prisoner by pro bono counsel.

Motion granted.

MEMORANDUM OPINION AND ORDER

[PITMAN](#), Magistrate J.

*1 By a motion dated May 20, 2002, plaintiff moves for *pro bono* counsel.¹ For the reasons set forth below, the motion is granted.

The factors to be considered in ruling on a motion for *pro bono* counsel are well settled and include “the merits of plaintiff’s case, the plaintiff’s ability to pay for private counsel, [plaintiff’s] efforts to obtain a lawyer, the availability of counsel, and the plaintiff’s ability to gather the facts and deal with the issues if unassisted by counsel.” [Cooper v. A. Sargenti Co.](#), 877 F.2d 170, 172 (2d Cir.1986). Of these, “[t]he factor which command[s] the most attention [is] the merits.” *Id.* [Accord Odom v. Sielaff](#), 90 Civ. 7659(DAB), 1996 WL 208203 (S.D.N.Y. April 26, 1996). As noted fifteen years ago by the Court of Appeals:

Courts do not perform a useful service if they appoint a volunteer lawyer to a case which a private

lawyer would not take if it were brought to his or her attention. Nor do courts perform a socially justified function when they request the services of a volunteer lawyer for a meritless case that no lawyer would take were the plaintiff not indigent.

[Cooper v. A. Sargenti Co.](#), *supra*, 877 F.2d at 174. See also [Hendricks v. Coughlin](#), 114 F.3d 390, 392 (2d Cir.1997) (“In deciding whether to appoint counsel ... the district judge should first determine whether the indigent’s position seems likely to be of substance.”).

Plaintiff’s motion papers adequately establish all of the grounds for *pro bono* counsel except the potential merit of the claim. However, I conclude that the motion papers, in conjunction with the complaint, do establish a sufficient basis for the submission of this matter to the *pro bono* panel.

This action is brought pursuant to [42 U.S.C. § 1983](#); plaintiff, an incarcerated inmate, alleges that defendants were deliberately indifferent to serious dental problems from which he suffered with the result that plaintiff suffered prolonged an unnecessary pain and now suffers from an increased likelihood that plaintiff will lose all of his lower teeth.² The complaint sets forth the alleged facts giving rise to plaintiff’s claim, including plaintiff’s numerous requests for treatment of his lower teeth and the actions taken in response. Although it is impossible to determine the ultimate merits of plaintiff’s claim at this time, the detailed allegations in the complaint, the nature of the deficient health care alleged and plaintiff’s allegation that he previously recovered a judgment in the New York Court of Claims for the loss of his upper teeth lead me to conclude that the plaintiff’s claim is at least sufficiently meritorious for the complaint to be considered by the *pro bono* panel.

Accordingly, plaintiff’s motion to have this matter added to the list of cases considered by the Court’s *pro bono* panel is granted. The Pro Se Clerk is directed to submit a copy of the complaint and a copy of this Order to the members of the panel.

All Citations

Not Reported in F.Supp.2d, 2002 WL 31427349

Footnotes

- 1 In a civil case, such as this, the Court cannot actually “appoint” counsel for a litigant. Rather, in appropriate cases, the Court submits the case to a panel of volunteer attorneys. The members of the panel consider the case and each decides whether he or she will volunteer to represent the plaintiff. If no panel member agrees to represent the plaintiff, there is nothing more the Court can do. See generally *Mallard v. United States District Court*, 490 U.S. 296, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989). Thus, even in cases where the Court finds it is appropriate to request volunteer counsel, there is no guarantee that counsel will actually volunteer to represent plaintiff.
- 2 The complaint alleges that plaintiff has already lost all of his upper teeth as a result of deficient dental care provide by prison authorities.

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