

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHNATHAN WHEELER-WHICHARD, 97-A-4114,

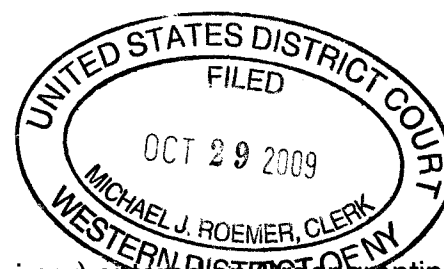
Plaintiff,

-v-

JOHN ROACH, Chairman of Program Committee
of Attica Correctional Facility, et al.,

Defendants.

DECISION AND ORDER
09-CV-0594S



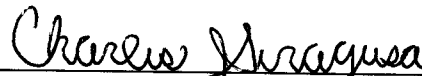
On August 24, 2009, the Court (Hon. David G. Larimer) entered an Order granting plaintiff permission to proceed *in forma pauperis* and, pursuant to 28 U.S.C. § § 1915(e)(2)(B) and 1915A, dismissing plaintiff's complaint against defendants Fischer, Conway, Dolce and Reynolds with prejudice for failure to state a claim upon which relief can be granted, and granting plaintiff permission to file an amended complaint against remaining defendants Chappius or Roach regarding only the claim alleging a due process violation. (Docket No. 3). On September 1, 2009, plaintiff filed a motion for reconsideration of the Court's Order dismissing some of the claims in this matter (Docket No. 4). On September 22, 2009 plaintiff filed an amended complaint (Docket No. 6) and a motion for the appointment of counsel (Docket No. 5). On October 14, 2009, plaintiff filed a motion to withdraw the motion for reconsideration. (Docket No. 7).

Plaintiff's motion to withdraw the motion for reconsideration is granted and the Clerk of the Court is directed to terminate said motion. Plaintiff's motion for the appointment of counsel is denied without prejudice. At this time, there is insufficient information before the Court to make the necessary assessment of plaintiff's claims under the standards

promulgated by *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), inasmuch as it has not been determined whether, pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A, the amended complaint will proceed and issue has yet to be joined.¹ Therefore plaintiff's motion for appointment of counsel is denied without prejudice at this time. It is the plaintiff's responsibility to retain an attorney or press forward with this lawsuit *pro se*. 28 U.S.C. § 1654.

SO ORDERED.

Dated: Oct 22, 2009
Rochester, New York



CHARLES J. SIRAGUSA
United States District Judge

¹The Court will issue an order with respect to its review under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A in due course.