



Presently before this Court is Plaintiff's renewed Motion for Appointment of Counsel, ECF No. 56, which requires the Court to determine whether, under the facts and circumstances of this case, the Court should exercise its discretion pursuant to 28 U.S.C. § 1915(e)(1) and request an attorney to represent Plaintiff in the prosecution of this action.<sup>1</sup>

In the instant Motion, Plaintiff requests that counsel be appointed for the purpose of conducting further investigation and to represent him in his jury trial. ECF No. 56 at 2. Plaintiff also notes that he is undergoing medical treatment at a different facility until April 19, 2021, where he does not have access to his legal materials. Id. at 1-2.

Upon review, the Court finds that Plaintiff's Motion should be denied without prejudice. To the extent Plaintiff seeks counsel in order to conduct further discovery, the Court notes that fact discovery has been completed in this matter. The Court also granted Plaintiff an extension of time to file his Objections, if any, to the Report and Recommendation in order to address any concerns arising out of his temporary relocation to another facility for medical treatment.

In addition, for the reasons set forth in the Court's Order dated March 9, 2020, ECF No. 14, and because consideration of the factors set forth in Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993) does not warrant the appointment of counsel in this instance, the Court declines to exercise its discretion and request counsel to represent plaintiff in the prosecution of this action. See Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997).

Further, because Defendants' Motion for Summary Judgment is still pending and the parties have not engaged in formal alternative dispute resolution, it is not clear at this juncture whether Plaintiff's claims will proceed to trial, or if further proceedings will occur. Given the

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<sup>1</sup> This is Plaintiff's second Motion for the Appointment of Counsel. Plaintiff filed a previous request for counsel at the pleadings stage of this case, which the Court denied without prejudice. ECF Nos. 11 and 14.

scarcity of *pro bono* resources, the Court finds that it is appropriate to deny Plaintiff's request at the present time. However, Plaintiff may renew this request as appropriate after the Court enters an Order resolving the Motion for Summary Judgment.

Accordingly, the following Order is entered:

AND NOW, this 28<sup>th</sup> day of April 2021, IT IS HEREBY ORDERED that Plaintiff's Motion for Appointment of Counsel, ECF No. 56, is DENIED without prejudice.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights.

BY THE COURT:

/s/ Maureen P. Kelly  
MAUREEN P. KELLY  
UNITED STATES MAGISTRATE JUDGE

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All counsel of record via CM/ECF.