

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOSEPH R. KING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 04-95-KAJ
DR. GREGORY VILLABOND,	)	
GEORGETOWN MENTAL HEALTH, and	)	
STATE OF DELAWARE	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Before me is a motion for appointment of counsel (Docket Item ["D.I."] 8) and a motion for leave to amend the Complaint (D.I. 12) filed by the plaintiff, Joseph R. King ("King"). In the Complaint, King alleges that, through the treatment administered by Dr. Gregory Villabond ("Villabond") at an institution known as Georgetown Mental Health ("GMH"), which treatment was mandated by the State of Delaware<sup>1</sup> he became addicted to the drug Adderal, and then to cocaine, which caused his current incarceration. (D.I. 1 at 3A.) For the reasons set forth below, the motion for leave to amend is granted, the motion for appointment of counsel is denied, and the complaint is dismissed in part.

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<sup>1</sup> Villabond, GMH, and the State of Delaware are referred to here collectively as the "Defendants."

## II. DISCUSSION

### A. Leave to Amend the Complaint

King has filed a motion for leave to amend his complaint. (D.I. 12.) Under Federal Rule of Civil Procedure 15(a), “[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.” Fed. R. Civ. P. 15. Here, the Complaint has not yet been served on Defendants, and no responsive pleading has been filed or served. Therefore, King’s motion for leave to amend his complaint is granted.

### B. Appointment of Counsel

King has also filed a motion requesting the appointment of counsel. (D.I. 8.) A plaintiff has no constitutional or statutory right to the appointment of counsel in a civil case. See *Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir.1997); *Tabron v. Grace*, 6 F.3d 147, 153-54 (3d Cir.1993). Under certain circumstances, the Court may in its discretion appoint an attorney to represent an indigent civil litigant. See 28 U.S.C. § 1915(e)(1).

However, in *Tabron* and again in *Parham*, the Third Circuit Court of Appeals articulated the standard for evaluating a motion for appointment of counsel filed by a *pro se* plaintiff. Initially, the Court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in fact and law. See *Parham*, 126 F.3d at 457 (citing *Tabron*, 6 F.3d at 157); accord *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir.1981) (per curiam) (cited with approval in *Parham* and *Tabron* ). Only if the Court is satisfied that the claim is factually and legally meritorious, should it then examine the

following factors: (1) the plaintiff's ability to present his own case; (2) the complexity of the legal issues; (3) the extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) the degree to which the case may turn on credibility determinations; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can attain and afford counsel on his own behalf. See *Parham*, 126 F.3d at 457-58 (citing *Tabron*, 6 F.3d at 155-56, 157 n. 5). This list, of course, is illustrative and, by no means, exclusive. See *id.* at 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

Even if King's claims have merit, King does not meet the remaining *Parham* and *Tabron* factors. First, King's communication to the court thus far has demonstrated that he is able to present his own case, which contains no complex factual or legal issues. Additionally, it does not appear that extensive factual discovery will be required in this case, and King appears capable of undertaking it himself. Although King is unable to afford counsel on his own behalf, this alone is not enough to warrant the appointment of counsel. Therefore, King's motion for appointment of counsel is denied.

### C. Sovereign Immunity

The Eleventh Amendment protects the State of Delaware from suit, as "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state." *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (quoting *Employees v. Missouri Public Health & Welfare Dep't*, 411 U.S. 279, 280 (1973)). There is nothing to suggest that the State of Delaware has

consented to this suit. Therefore, the claims in the Complaint against the State of Delaware are dismissed.

Additionally, the Eleventh Amendment proscribes any suit against a state, or against a state agency or department or a state official when “the state is the real, substantial party in interest,” unless the state consents to suit. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100-101 (1984). A plaintiff may sue a state official for monetary damages, but “when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.” *Ford Motor Co. v. Department of Treasury of State of Indiana*, 323 U.S. 459, 464 (1945). Here, it is unclear whether GMH is a state agency, whether Villabond is a state official, and whether King is requesting monetary damages. Therefore, these claims are not dismissed at this time, but may be subject to dismissal upon clarification of the status of the remaining Defendants.

### **III. CONCLUSION**

For the foregoing reasons IT IS HEREBY ORDERED that:

1. King’s Motion for Leave to File an Amended Complaint (D.I. 12) is GRANTED.
2. King’s Motion for Appointment of Counsel (D.I. 8) is DENIED.

3. The claims against the State of Delaware are DISMISSED because they are barred by 11th Amendment Sovereign Immunity.

  
UNITED STATES DISTRICT JUDGE

September 23, 2005  
Wilmington, Delaware