

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ELTON LEROY PUMPHREY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-184-KAJ  
 )  
 GUY BAULL, )  
 )  
 Defendant. )  
 )

**MEMORANDUM ORDER**

Before the Court is Elton Leroy Pumphrey’s (“Plaintiff”) Motion for Appointment of Counsel (Docket item [“D.I.”] 14; the “Motion”). For the reasons that follow, Plaintiff’s Motion is denied.

Plaintiff is a *pro se* litigant currently incarcerated at the Delaware Correctional Center (“DCC”) in Smyrna, Delaware. (D.I. 14; D.I. 16.) On February 6, 2003, Plaintiff commenced this action by filing a Complaint alleging that Lieutenant Guy Baull (“Defendant”), a Correctional Officer, violated Plaintiff’s rights. (D.I. 2) Specifically, Plaintiff alleges that Defendant assaulted him while he was incarcerated at the Sussex Community Corrections Center in Georgetown, Delaware. (*Id.*) On July 1, 2003, Plaintiff filed this Motion. In support of the Motion, Plaintiff has argued that the appointment of counsel would serve the best interests of justice because the Plaintiff is incarcerated, unskilled in the law, and has limited access to DCC’s law library. (D.I. 14.)

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). However, under certain circumstances, the

Court may appoint counsel to represent an indigent civil litigant. See 28 U.S.C. § 1915 (e)(1).

The standard for evaluating whether a court will appoint counsel to a civil litigant was articulated by the Third Circuit Court of Appeals in *Tabron* and *Parham*. Initially, the Court will examine the plaintiff's claim to determine whether it has some arguable merit in fact and law. *Parham*, 126 F.3d at 457. If the Court is satisfied that the claim is factually and legally meritorious, then it will 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. *Id.* at 457-58. However, this list is merely illustrative and, by no means, exhaustive. *Id.* at 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

Here, the *Parham-Tabron* factors do not weigh in favor of appointing counsel for Plaintiff. Plaintiff is simply alleging that Defendant assaulted him on one occasion, and thus has presented no complex legal issues. *Cf. Parham*, 126 F.3d at 459 ("A lay person ... should be able to comprehend what he has to prove when the legal issue is understandable.") Therefore, there is no need for an extensive factual investigation or expert testimony. Further, Plaintiff has demonstrated, through his use of DCC's law library and his correspondence with the court, his ability to present his own case. While the case may turn on credibility determinations between Plaintiff and Defendant, and

although Plaintiff can not afford to retain counsel, these factors alone do not require the appointment of counsel. *Cf. Parham*, 126 F.3d at 460 (“While the case ultimately may have relied upon credibility, it is difficult to imagine a case that does not.”) Therefore, the appointment of counsel for Plaintiff is not warranted.

Accordingly, it is hereby ORDERED that Plaintiff’s Motion for Appointment of Counsel (D.I. 14) is DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

March 8, 2004  
Wilmington, Delaware