

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENDALL RAYE ROGERS,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-476-KAJ
)
 STATE OF DELAWARE, DEPARTMENT)
 OF PUBLIC SAFETY, DIVISION OF)
 MOTOR VEHICLES,)
)
 Defendant.)

MEMORANDUM ORDER

Presently before me is Kendall Raye Rogers' ("Plaintiff") Motion for Appointment of Counsel. (Docket Item ["D.I."] 20; the "Motion".) For the reasons that follow, Plaintiff's Motion will be denied.

Plaintiff, an African-American, is a *pro se* litigant residing in Dover, Delaware. (D.I. 1.) On May 16, 2003, he filed a complaint alleging that the State of Delaware Department of Public Safety, Division of Motor Vehicles ("Defendant") engaged in employment discrimination against him on the basis of his race, in violation of Title VII of the Civil Rights Act of 1964 and Delaware's Discrimination in Employment Act. (*Id.*) A few months later, on December 22, 2003, Plaintiff filed his Motion, which consists solely of the following sentence: "I Kendall Rogers, requesting for an attorney from the state on 12-22-03 for Case # 03-476 KAJ." (D.I. 20.)

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 *Parham* and *Tabron*. 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 my decision.

Plaintiff's Motion is merely a one-sentence request that the court assign an attorney to represent him in this case. He has not shown whether or not he can afford a lawyer. Furthermore, Plaintiff's claims of employment discrimination are of questionable merit, especially in light of the fact that the Delaware Department of Labor ("DDOL") sent Plaintiff a letter on December 31, 2002, stating that, after investigating his claim, "there is no reasonable cause to believe that a violation of Delaware discrimination law has occurred." (See attachments to D.I. 1.) These findings were subsequently adopted by the Equal Employment and Opportunity Commission ("EEOC") on March 6, 2003. (*Id.*) Therefore, it seems unlikely that Plaintiff's claims are factually and legally

meritorious, *see Parham*, 126 F.3d at 457, and I need not consider the remaining *Parham-Tabron* factors.

Given that Plaintiff has offered no evidence to show that he is financially incapable of retaining an attorney, and given the substantial question that has been raised as to the merit of Plaintiff's claim, it is hereby ORDERED that Plaintiff's Motion (D.I. 20) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
May 19, 2004