IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE LAUDENBERGER	:	CIVIL ACTION
	:	
v.	:	
	:	
MAJOR SCIOTTI, et al.	:	NO. 99-4155

MEMORANDUM AND ORDER

HUTTON, J. **January 10, 2000**

Presently before this Court is Plaintiff Bruce Laudenberger's ("Laudenberger") Motion for Appointment of Counsel (Docket No. 6). For the foregoing reasons, said Motion is **DENIED**.

I. BACKGROUND

Plaintiff is currently incarcerated in a Commonwealth correctional institution. He filed the instant lawsuit against various Commonwealth officials, alleging violations of his 14th Amendment, 8th Amendment, and 4th Amendment rights. He alleges that his rights were violated when (1) prison employees inflicted various physical punishments on him on September 2-3, 1998, (2) prison medical staff refused him care, (3) prison employees destroyed his personal property, and (4) his attempts to pursue administrative remedies went unanswered. Plaintiff also alleges that he has ongoing medical problems that are the direct result of the unlawful treatment he received while incarcerated in a Commonwealth correctional institution.

II. LEGAL STANDARD FOR APPOINTMENT OF COUNSEL

Congress provided that a district court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C. S 1915(e)(1) (1996). The court, however, must dismiss the case if the action "(I) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. S 1915(e)(2)(B) (1996). Congress gave the courts this broad discretion because indigent civil litigants do not have a statutory right to appointed counsel. Tabron v. Grace, 6 F.3d 147, 153 (3d Cir. 1993), cert. denied, 510 U.S. 1196, 114 S. Ct. 1306 (1994). Because indigent civil litigants do not have a statutory right to appointed counsel, the United States Court of Appeals for the Third Circuit has set forth a two-tiered analysis to guide the courts in deciding whether to appoint counsel. Tabron, 6 F.3d at 155-58.

Under the Tabron court’s analysis, a district court must first determine whether the case has arguable legal and factual merit. Id. at 155. If the case has some legal and factual basis, then a court must consider whether: (1) the plaintiff is able to present her case; (2) the degree of difficulty or complexity of the legal issues; (3) the "degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation," including whether discovery will be extensive; and

(4) the extent to which the case will turn on credibility determinations and experts will be needed. Id. at 155-56. A court must also consider factors militating against appointing counsel, such as the lack of funding to pay appointed counsel, the limited supply of competent lawyers willing to undertake such representation without compensation, and the value of lawyers' time. Id. at 157. If after completing this analysis, a court is convinced that the indigent litigant is deserving of counsel, then the court may appoint counsel for that litigant. Id. at 157-58.

III. DISCUSSION

In deciding whether a civil litigant's request for appointment of counsel is meritorious, the Court must first determine whether the case has arguable legal and factual merit. The Court concludes that Plaintiff's Complaint presents at first blush a case with the merit required to go forward. Plaintiff alleges that there are witnesses to the physical abuse inflicted upon him and that there are photos which document the extent and severity of his physical injuries. This evidence lends credence to the factual merit of Plaintiff's Complaint. There is also legal merit to Plaintiff's Complaint as he timely filed this lawsuit and he alleges that prison employees, arguably people who acted under color of state law, deprived him of rights, privileges, or immunities secured by

the Constitution or laws of the United States.[1] See West v. Atkins, 487 U.S. 42, 48-49, 108 S. Ct. 2250 (1988); Groman v. Township of Manalpan, 47 F.3d 628, 633 (3d Cir. 1995). Having satisfied the threshold requirements established by the Tabron holding, the Court turns to Tabron's four-part test.

The Court must first determine whether Plaintiff is able to present his case. As Plaintiff'S Complaint evidences his ability to articulate the events that gave rise to his lawsuit, the constitutional rights which he believes were violated, and his claims for relief, the Court concludes that Plaintiff is able to present his case.

Next, the Court considers the degree of difficulty or complexity of the legal issues. While the ordinary layperson might have difficulty establishing that relief is appropriate pursuant to Plaintiff's stated causes of action, the law in this area is not

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[1] Although not expressly stated in Plaintiff's Complaint, it appears that Plaintiff states claims under 42 U.S.C. § 1983. Section 1983 reads, in pertinent part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Section 1983 does not create substantive rights, but "provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws." Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir.1996). A plaintiff seeking to advance a claim under § 1983 must establish the deprivation of a right secured by the United States Constitution or federal law, and that the alleged violation was committed by a person acting under color of state law. Id.; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327 (1986).

only voluminous but replete with cases where prisoners capably proceeded pro se. Therefore, the Court concludes that neither the degree of difficulty nor the complexity of the legal issues presented is so onerous that Plaintiff cannot proceed in the absence of assistance from counsel.

The Court now considers the degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation, including whether discovery will be extensive. Again, the Court takes direction from the fact that other prisoners have skillfully pursued similar claims without the assistance of counsel. In light of Plaintiff's Complaint, the Court is unable to conclude that the factual investigation required for Plaintiff's success is as such that counsel must be appointed.

Finally, the extent to which the case will turn on credibility determinations and the need for experts does not weigh in favor of Plaintiff's motion. In the context of credibility determinations or the need for expert testimony, the Court fails to understand how Counsel will assist Plaintiff's suit. The instant matter is not one which normally requires expert testimony. Moreover, the Court cannot discern how credibility determinations will be facilitated by counsel. Accordingly, Plaintiff's Motion is denied. In the

event that issues arise in the future that raises a question as to Plaintiff’s need for appointed counsel, however, the Court will consider a renewed Motion for Appointment of Counsel.

An appropriate Order follows.

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O R D E R

AND NOW, this day of January, 2000, upon consideration of Bruce Laudenberger's ("Laudenberger") Motion for Appointment of Counsel (Docket No. 6), IT IS HEREBY ORDERED that said Motion is **DENIED**.[2]

BY THE COURT:

_____
HERBERT J. HUTTON, J.

[2] In the event that developments arise that might justify appointment of counsel under the Tabron court's analysis, the Court will consider a renewed Motion for Appointment of Counsel.