

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
APR 17 2018
JEFFREY P. COLWELL
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No: 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON

Plaintiff,

v.

CARA BOXBERGER in her individual capacity,
JASON SHUTTERS in his individual capacity,

Defendants.

MOTION FOR APPOINTMENT OF "PRO BONO" COUNSEL # 3.

The Honorable United States Magistrate Judge SCOTT T. VARHOLAK's Minute Order [#73 at 2] states, "Plaintiff's letter also requests that counsel be appointed to assist Plaintiff in the furtherance of this case. [#71 at 3] To the extent Plaintiff seeks the appointment of pro bono counsel, he must file a separate, written motion that addresses the factors for appointment of pro bono counsel identified in D.C. COLO. LAttYR 15 (f)(1)(B).³" Footnote 3 reads: "Those factors include: (1) the nature and complexity of the action; (2) the potential merit of the claims or defenses of the unrepresented party; (3) the

demonstrated inability of the unrepresented party to retain an attorney by other means; and (4) the degree to which the interests of justice, including the benefits to the court, will be served by appointment of counsel." Also, of additional noteworthy notice, the Minute Order further states, "This case matter is before the Court upon its review of Plaintiff's letter to the Court dated January 31st, 2018. [#71] In the letter, Plaintiff states that he was unexpectedly transferred from Arkansas Valley Correctional Facility ("AVCF") to the Larimer County Jail on January 29, 2018 and thus had to leave 'the bulk of his legal work and legal documents' at AVCF. [Id. at 1]". This Minute Order was DATED: February 7, 2018.

For purposes of this Motion, D.C. COLO. LAttyR 15 (e)(1)(A,B,C) (2) reads as follows: "(1) The following unrepresented parties are eligible for appointment of pro bono counsel: (A) an unrepresented non-prisoner who has been granted leave to proceed *in forma pauperis* (IFP) under 28 U.S.C. § 1915; (B) an unrepresented prisoner; and (C) after demonstrating limited financial means, an unrepresented non-prisoner who has paid any filing fee in full. (2) A defendant or party responding to a complaint, petition, or appeal who satisfies the criteria above shall be eligible for appointment of pro bono counsel." This Court should note that Mr. Anderson is eligible for appointment of

pro bono counsel under (1)(B). Although Mr. Anderson is not a "non-prisoner," He has been granted leave to proceed *in forma pauperis*, filing status under 28 U.S.C. §1915, and this Court has found Mr. Anderson to be "indigent," or documented demonstration of limited financial means.

For purposes of this Motion, D.C. COLO. LAtty R 15(f)(1)(B) reads as follows: "(B) In deciding whether to appoint counsel, the judicial officer should consider all relevant circumstances, including, but not limited to, the following: (i) the nature and complexity of the action; (ii) the potential merit of the claims or defenses of the unrepresented party; (iii) the demonstrated inability of the unrepresented party to retain an attorney by other means; and (iv) the degree to which the interests of justice, including the benefits to the court, will be served by a appointment of counsel."

Applicable to this motion is the following records: On 04/11/2017, Mr. Anderson filed Motion For Appointment of Pro Bono Counsel #1 [#4]. On 04/12/2017, Magistrate Judge GORDON P. GALLAGHER denied this motion deeming the motion "Premature." [#5]. On 06/06/2017, Mr. Anderson Filed Motion For Appointment of Counsel #2 [#14] (This Motion was a photocopied version of the first motion with additional writing on the motion). On 07/03/2017, the Honorable Senior Judge LEWIS T. BABCOCK issued a MINUTE ORDER denying the second motion as premature. [#16].

HENCEFORTH, Mr. Anderson files a third Motion for Appointment of Pro Bono Counsel #3 "Pro Se" with the following argument or applicable justification HEREIN, as follows:

(i) the nature and complexity of the action;

(1) Larimer County Jail has a new active policy that denies all inmates in Civil (Non-Criminal Cases) reasonable access to law kiosks. This policy has been in place since Mr. Anderson's last writ transfer on January 29th, 2018. All motions filed since 01/29/2018 were filed without access to a Law Kiosk. Mr. Anderson's projected outdate of 06/11/2019 was reduced by 6 months by his successful completion of the Citizen Improvement Program, making his new projected outdate to 12/11/2018. This means Mr. Anderson will be without access to a Law Kiosk until after 12/11/2018, or for the immediate future. Appointment of Pro Bono Counsel would "level the playing field," and cure this deficiency.

(2) Many of Mr. Anderson's filings were filed without reasonable access to a Law Library, and were filed often under duress due to Mr. Anderson's abnormally excessive number of Facility transfers, an element out of Mr. Anderson's control. The number of transfers total over a dozen since the initial filing within one calendar year. Mr. Anderson has consistently informed this Court of difficulties in Formal Letters and Former Notices/Motions after each subsequent transfer.

(3) This action is highly complex for an unrepresented prisoner. The complexity of this action incorporates the 4th Amendment of the U.S. Constitution, and there are an abundance of 4th Amendment violations Federal case files, that are both relevant and applicable to the legal determinations in this case. This action incorporates the Colorado Government Immunity Act (C.G.I.A) and the Tort of "Intentional Infliction of Emotional Distress." Mr. Anderson has no actual reasonable access to these documents. This action involves Colo. R. Crim. P. 41.1(f)(1), which Mr. Anderson has no access to that criminal statute to reasonably rebuttal VARHOLAK'S recommendation. Claims in this action were sidestepped by Judicial Officers as they were set forth without proper case citations. Actions involving District Attorneys, Detectives, Juvenile sealing laws, are all highly complex. In addition, all of the Federal case files on qualified immunity defenses, Federal Rules of Civil Procedure, Discovery processes, subpoenas, interrogatories, dispositions are highly complex, and Mr. Anderson has ZERO access to a Law Kiosk, an element out of his control due to Larimer County Jails new policy. All of these elements could be cured or reasonably addressed by appointment of pro bono counsel. Currently pending is a Motion to Dismiss, Opposition Motion #1,

VARHOLAK's second recommendation, Objection, Motion #2, etc. These are complex motions that Mr. Anderson has been involuntarily forced to address without the assistance of counsel, and no realistically feasible access to a law kiosk. These elements are out of Mr. Anderson's control, and it is highly unfair to allow claims or defendants to be dismissed or removed without first affording Mr. Anderson, as an eligible individual, to the appointment of qualified pro bono counsel. Amongst other complex elements not mentioned, a Judicial Officer can appoint pro bono counsel on its own initiative at any time.

(4) The nature of this actions involves an experienced law firm HALL & EVANS representing defendant Shuttlers, multiple lawyers well-versed in Federal Law. The nature of this action involves Mr. Anderson's first federal pleading, or federal lawsuit in his entire lifespan. Elements of claims are highly personal, and would be better plead by an impartial equally qualified lawyer, such as DAVID LANE with the Lane & Kilmur Law Firm in Denver, CO, who accepts pro bono cases. The Court should note that the Motion to Dismiss wanted Mr. Anderson to "particularize" claims with 10th Circuit, or Supreme Court case law, both highly complex in nature. Yet, Mr. Anderson had no access to these sections of a law kiosk, appointment of pro bono counsel would address this deficiency in the Plaintiff's ability to properly litigate this case, and would "level the playing field."

(ii) the potential merit of the claims or defenses of the unrepresented party;

(1) The potential merit of the claims amount to a quantifiable \$225,000⁰⁰ collectively, and \$100,000 against defendant Shuttles alone. Based on similar cases that Mr. Anderson reviewed while at A.V.C.F, he planned to file a motion to "Elevate Damages Sought" to \$750,000 → \$1,250,000. There are an abundance of illegal strip searches in violation of the Fourth Amendment that were either settled, or awarded damages in this range. Specific case files were left at A.V.C.F, but an example was a Trans Gender plaintiff was awarded \$750,000 for an illegally conducted search within a jail facility. Even if the Court dismisses any claims, the excessive force claim could merit or justify a \$100,000 dollar suit alone on its face value alone.

(2) Referencing RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (Doc. #85), if the Court chooses to adopt Magistrate Judge SCOTT T. VARHOLAK'S order, then Defendants' Motion [#63] will be DENIED with respect to Claim Two of the Second Amended Complaint. This means that Claim Two has merit in the Court's opinion, since it is recommended by a Judicial Officer to respectively survive the Motion to Dismiss. This adds credence to the potential merit of the claim of the unrepresented party: Mr. Anderson.

(iii) the demonstrated inability of the unrepresented party to retain an attorney by other means;

(1) Mr. Anderson is an "incarcerated person" in the state of Colorado serving an indeterminate life sentence in Colorado's Department of Corrections (D.O.C.).

(2) Mr. Anderson is delimited in his ability to retain an attorney by other means due to his indigent status and incarceration status, which demonstrates a serious inability of Mr. Anderson, the unrepresented party, to retain an attorney by any other means. Leaving his ability to retain an attorney solely on the Court's discretion.

(3) Mr. Anderson has been granted "in forma pauperis" status in this case. Although Mr. Anderson is willing to offer forward a "Fee Agreement" to pay a "Pro Bono" Lawyer the standard 33%-45% of any settlement or judgment, the Court should note that Mr. Anderson is delimited in his ability to draft a contract, or even call and speak to an attorney without the Court's assistance due to his above statuses.

(iv) the degree to which the interests of justice, including the benefits to the court, will be served by appointment of counsel;

(1) The primary interest of justice is affording the plaintiff "equal reasonable access" to a law kiosk during the course of the litigation of this case. And to level or equal the playing field of Plaintiff vs. Defendant litigation ability.

(2) The degree to which the interests of justice would be served would allow a qualified lawyer to write a Third Amended Prisoner Complaint, to draft discovery motions, to properly cite applicable case law. A lawyer would help the interests of justice by setting forth the 4th Amendment Claims, Due Process Claims, etc. The Constitutional claims are significant, and an appointed lawyer would assist Mr. Anderson set forth claims in more clear and ambiguous language with proper legal citations.

(3) Another interest of justice would be the lack of proper timely service. This has happened twice. The first was LEWIS T. BABLOCK's orders, and SCOTT T. VARHOLAK's 1st recommendation. Appointment of Counsel cures this issue, as a pro bono lawyer would act as an intercessor to the Court.

(4) The benefits to the Court are of a multitude nature. Appointment of Counsel allows a lawyer to speak for Mr. Anderson at upcoming hearings. Appointment of Counsel will conserve the Court's resources and time, while expediting this case along the litigation process. Appointment of Counsel will significantly help Mr. Anderson develop evidence for a trial through methods such as depositions, written interrogatories, requests for production, inspections, and requests for proper admission.

(5) Appointment of Counsel will allow Mr. Anderson to properly object to legal determinations. Within a 14 Day window, Mr. Anderson had to file a formal objection and formal opposition motion without access to a law kiosk. This is unreasonable and unfair. The second objection motion filed with this motion was compiled without assistance of counsel, without access to a law kiosk. The benefit to the Court is Great if Mr. Anderson were to be afforded legal advice and guidance. Many future needless or inappropriate motions could be avoided by the appointment of Counsel.

(6) Any other benefits to the Court, or interests to justice, not listed here may be noted separately on a Judicial Officer's own initiative, or own notice.


WHEREFORE;

Mr. Anderson dutifully, respectably and humbly submits this motion to Appoint Pro Bono Counsel #3 to this Honorable Court on Thursday, April 12th, 2018, and will respectfully DEFER to this Honorable Court's just and sound decision.

Sincerely,

DOC#175210

04/12/18

X  "Pro Se"
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