

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLIFTON DAY,

Plaintiff,

Case No. 05-CV-71311

vs.

JUDGE DENISE PAGE HOOD
MAGISTRATE JUDGE STEVEN D. PEPE

BENCY MATHAI, ET AL

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME (#66),
DENYING PLAINTIFF'S MOTIONS TO APPOINT COUNSEL (#68) AND FOR EXCESS PAGES (#69),
DENYING DEFENDANT ROTH'S MOTION FOR DISMISSAL (#67) AND
ORDERING DEFENDANT CMS OR MDOC TO PROVIDE THE LAST KNOWN ADDRESS FOR
DEFENDANT MATHAI UNDER SEAL**

Plaintiff, an inmate in the custody of the Michigan Department of Corrections ("MDOC"), filed this action under 42 U.S.C. §1983, alleging that defendants violated his constitutional rights. On October 3, 2006, the undersigned ordered Plaintiff to show cause why Defendant Roth's motion to dismiss should not be granted. Plaintiff's motion for extension of time to respond to the show cause is GRANTED, as it appears that (a.) the order was not directly sent to Plaintiff's current address, causing considerable delay and (b.) a copy of the electronic version of the complaint was not served with the order as the undersigned directed, making it impossible for Plaintiff to respond in the manner requested. **A copy of the complaint will be served to Plaintiff with this order and he shall respond as directed in the show cause order on or before March 23, 2007. Defendant Roth may file a response on or before April 23, 2007.**

Plaintiff's motion to file in excess of 20 pages in response to the show cause order is DENIED. The show cause order specifically directs Plaintiff to provide a *brief* summary of the unconstitutional

conduct Defendant Roth is alleged to have taken and indicate where in the original complaint the grievances related to Defendant Roth's conduct are located. It is expected that this can be accomplished in considerably less than 20 pages.

Defendant Roth's motion to dismiss is based upon Plaintiff's failure to respond to the show cause order, and is DENIED.

Plaintiff's second application for appointment of counsel is DENIED without prejudice at this time. Under 28 U.S.C. § 1915(e)(1), a federal court may request counsel to represent an indigent plaintiff. 28 U.S.C. § 1915(e)(1); *Reneer v. Sewell*, 975 F.2d 258, 261 (6th Cir. 1992). Yet, appointment of counsel for an indigent party is a privilege justified only under exceptional circumstances. *Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993). To determine whether exceptional circumstances necessitating the appointment of counsel are present, courts consider the type of case involved, the ability of the plaintiff to represent himself, the complexity of the factual and legal issues, and whether the plaintiff's claims are frivolous or have an extremely small likelihood of success. *Id.*; *Reneer*, 975 F.2d at 261; *Mars v. Hanberry*, 752 F.2d 254, 256 (6th Cir. 1985).

Plaintiff has demonstrated in his complaint and the exhibits attached thereto that he understands the legal issues and can present these issues to a Court in a satisfactory manner. It must be noted that there is a grave scarcity of attorneys available to represent indigent persons in this Court. This Court has no funds to secure attorneys for indigent parties in civil cases, and has great difficulty finding attorneys willing to volunteer time to serve in *pro bono* cases without payment.

Plaintiff may renew the motion if his request for counsel after the court rules on the pending dispositive motion.

On March 5, 2005, this court entered an order directing the United States Marshall to effectuate service on the named defendants in this matter. In his motion requesting leave to file excess pages, Plaintiff points out that Defendant Dr. Bency Mathai has not yet been served and apparently is no longer employed at the Parnell Correctional Facility.

A review of the docket in this matter reveals that on June 7, 2005, the Parnell Correctional Facility returned an unexecuted waiver of service for Defendant Mathai, indicating that Defendant Michigan Department of Corrections (MDOC) could not accept service because Dr. Mathai was not employed by MDOC, but by Defendant Correctional Medical Services (CMS). On June 21, 2005, the Marshals redirected service to CMS, and on August 29, 2005, the Marshals indicated that no response was received and the summons had since expired. CMS was dismissed from this matter on September 30, 2005.

Therefore, a new summons shall be executed and the Marshals are ordered to direct service of the summons and complaint in this matter to CMS. In the event CMS cannot accept service on Defendant Mathai's behalf, CMS is ordered to provide to the court, under seal, the last known address of Defendant Mathai, so the Marshals may direct service. If CMS provides Defendant Mathai's last known address, the Marshals are ordered to direct service in accordance with the March 5, 2005, order in this matter.

SO ORDERED.

Dated: January 11, 2007
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that on January 12, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Christine M. Campbell, Kimberley A. Koester, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Clifton Day, #233435, Hiawatha Correctional Facility, 4533 W. Industrial Park Drive, Kincheloe, MI 49786-0-001

I further certify that on January 12, 2007, I have mailed a copy of the complaint along with this order the plaintiff, and that I have arranged for service by the United States Marshal Service of the plaintiff's complaint upon the defendant.

s/ James P. Peltier
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U.S. District Court
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Flint, MI 48502
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