

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Alonzo R. CURTIS,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1378 (PCD)
	:
John G. ROWLAND, et al.,	:
Defendants.	:

RULING ON PLAINTIFF’S MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff moves for appointment of counsel. (Dkt. No. 2.) The motion is granted.

I. STATEMENT OF JURISDICTION

Plaintiff brings his complaint against John G. Rowland, Governor of the State of Connecticut, James R. Smith, Claims Commissioner of the State of Connecticut, and Gene Gavin, Commissioner of the Department of Revenue Services for the State of Connecticut, under 42 U.S.C. § 1983, alleging a deprivation of his rights under the Fourteenth Amendment, Section 1. (Dkt. No. 3 at 2-3.) As such, there is subject matter jurisdiction pursuant to 26 U.S.C. § 1331.

II. BACKGROUND

A. Factual Background

This court assumes the facts alleged by Plaintiff in his complaint. (See Dkt. No. 3.) In 1988, Plaintiff sold his home and moved from California to Connecticut. (Id. at 2.) The I.R.S. claimed he owed federal capital gains tax. The Connecticut Revenue Service then brought a claim against him for tax evasion, presumably for state income tax on these same capital gains. (Id. at 2-3.) He was denied an audit to clear himself. (Id. at 2.) He

appealed several times within the Connecticut Revenue Service unsuccessfully. (Id. at 3.) A tax warrant was issued in June 1998. (Id. at 4.) Apparently as a result of the tax warrant, he was unable to obtain a new job in July 1998. (Id. at 3.) In early August 1999, the tax warrant was dropped. (Id. at 4.) In late August 1999, he filed a claim with the Connecticut Claims Commissioner which was dismissed without a hearing in March 2000. (Id. at 2.)

B. Procedural History

Plaintiff filed his claim on July 21, 2000. (Dkt. No. 3.) Plaintiff's application to proceed in forma pauperis was granted on July 25, 2000. (Dkt. No. 1, Margin Endorsement.) He filed the present motion for appointment of counsel on July 21, 2000. (Dkt. No. 2.)

III. DISCUSSION

As a pro se party, Plaintiff is entitled to some deference in meeting pleading requirements. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). Under 28 U.S.C. § 1915(e)(1), "The court may request an attorney to represent any person unable to afford counsel." While district courts have "broad discretion" in deciding whether it is appropriate to appoint free counsel to indigent claimants under 28 U.S.C. § 1915(e)(1), Hodge v. Police Officers, 802 F.2d 58, 60 (2d Cir. 1986), they "should not grant such applications indiscriminately," Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). As a threshold matter, the court must decide whether the indigent has made sufficient efforts to obtain counsel. Hodge, 802 F.2d at 61. Once the court finds that the indigent has demonstrated that he is unable to obtain counsel, the court must consider the

merits of the indigent's claim.¹ Id.

A. Plaintiff's Efforts to Obtain Counsel

Plaintiff has made some efforts to obtain legal counsel. He has contacted two attorneys, each by telephone, who told him that they do not handle this type of case. (Dkt. No. 2 at 4.) He also contacted the A.C.L.U. by telephone who told him that they only handle class actions in this type of case. (See id. at 5.) He also visited the Quinnipiac Legal Clinic without success in obtaining counsel. (Id.)

These efforts are far from exemplary. It would be more appropriate had Plaintiff at least made some efforts to look among the bar for lawyers who practice in this area of the law. It would also have been more appropriate had he written them and included their written responses to his inquiries, rather than just including his representations as to the content of the telephone calls.

Whether Plaintiff has made sufficient efforts to obtain counsel is borderline, which is resolved in Plaintiff's favor.

B. Merits of Plaintiff's Claim

The Second Circuit in Hodge held, "In deciding whether to appoint counsel ... the district judge should first determine whether the indigent's position seems likely to be of substance." 802 F.2d at 61. When determining whether the indigent's position seems

¹ Once the court is satisfied that the two threshold requirements (efforts to obtain counsel and merits of the indigent's claim) are satisfied, the court should then consider the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues and any special reason why appointment of counsel would be more likely to lead to a just determination. Hodge, 802 F.2d at 61-62. A court may also consider the general availability of counsel. Cooper, 877 F.2d at 172.

likely to be of substance, the court should deny his request for appointment of counsel if it seems that the indigent's chances of success at trial are extremely slim. See id. at 60.

Plaintiff's complaint leaves a number of questions unanswered. For instance, it is not clear whether he is suing Defendants in their official or individual capacities.

Plaintiff is suing for a deprivation of his rights guaranteed him under the Fourteenth Amendment, Section 1. Presumably, he refers to a denial of property without due process of law. However, it is not clear whether he alleges that the Defendants failed to follow existing state or federal law which would have granted him a hearing or whether he alleges that state or federal law was followed but that the state or federal law is unconstitutional and does not comport with due process since it should have granted him a hearing.

It is also not clear whether he alleges that the failure to provide him with an audit or the failure to provide him with a hearing before the Claims Commissioner or both was the cause of his denial of due process.

Furthermore, it is not clear what Plaintiff claims Defendants' role in this whole process has been. Plaintiff does not allege any facts or circumstances as to whether the Defendants played an active role in denying him his due process rights or whether they merely denied his due process rights in some supervisory capacity. If the latter, Plaintiff leaves unclear the identity of the direct actors who denied him his due process rights and how the Defendants failed to supervise these direct actors properly.

The imperfect nature of Plaintiff's complaint makes it impracticable if not impossible for this court to adjudicate the preliminary merits of his claims. This goes to

reinforce his need for counsel so as to remedy this infirmity.²

IV. CONCLUSION

Plaintiff's motion for appointment of counsel (Dkt. No. 2) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, February __, 2001.

Peter C. Dorsey
Senior United States District Judge

² It is somewhat troubling that this creates a perverse incentive for pro se plaintiffs proceeding in forma pauperis, in that the more incomprehensible they draft their complaints, the more it would seem to improve their chance of obtaining free counsel. However, without a proper complaint, this court can not evaluate the preliminary merits of his claim. Nor can it go on to resolve the additional Second Circuit factors. See infra note 1. As such, the alternative choice before this court, to deny counsel to all pro se plaintiffs when the complaint is found wanting, is similarly unpalatable. It would deny all pro se plaintiffs the ability to obtain free counsel for the very reason that they need a lawyer and do not know how to draft a proper complaint. Although not a per se rule, in a difficult area of law such as § 1983 claims, this court thinks the better choice is to grant Plaintiff counsel than to not.