UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

Lucas B. Stone, et al.,

Plaintiffs,

: Case No. 3:04cv18 (JBA)

v. :

:

Town of Westport, et al., :

Defendants: :

RULING ON MOTION TO WITHDRAW APPEARANCE AND MOTION REQUESTING PROBONO ASSISTANCE WITH PRO SE REPRESENTATION [DOCS. ## 64,68]

Plaintiffs' attorneys requested permission to withdraw their appearances [Doc. # 64], which motion the Court took under advisement to give plaintiffs the opportunity to engage successor counsel or to file appearances on their own behalf (see [Doc. # 65]). As plaintiffs have now filed pro se appearances, the Court grants the Motion to Withdraw.

Subsequent to filing their <u>pro</u> <u>se</u> appearances, plaintiffs filed a motion seeking appointment of <u>pro</u> <u>bono</u> counsel to assist with their representation [Doc. # 68]. For the reasons that follow, this motion will be denied.

The Second Circuit has repeatedly cautioned district courts against the routine appointment of counsel. See, e.g., Hendricks v. Coughlin, 114 F.3d 390, 392-93 (2d Cir. 1997). In deciding whether to appoint counsel, the district court "should first determine whether the indigent's position seems likely to be of substance." Hodge v. Police Officers, 802 F.2d 58, 61 (2d Cir. 1986). The Second Circuit has emphasized the importance of

requiring an indigent to "pass the test of likely merit." <u>Cooper v. A. Sargenti Co.</u>, 877 F. 2d 170, 173-74 (2d Cir. 1989).

Plaintiff Zygmunt cannot meet this test as summary judgment has already been granted dismissing her claim. <u>See</u> [Doc. # 55].

Thus, the plaintiffs' motion as to Zygmunt must be denied.

Because plaintiff Stone's excessive force claim is now waiting to be tried, he satisfies this "test of likely merit." However, the Second Circuit has also made clear that before an appointment is even considered, the indigent person must demonstrate that he or she is unable to obtain counsel. Hodge, 802 F.2d at 61. In the motion, plaintiff Stone fails to detail any unsuccessful attempts to obtain legal assistance and his motion is thus premature. Reference to a disability is insufficient to meet this required showing.

Accordingly, the Motion to Withdraw [Doc. # 64] by Attorneys Pattis and Waisonovitz is GRANTED. Plaintiffs' Motion [Doc. # 68] is DENIED as to plaintiff Zygmunt and DENIED WITHOUT PREJUDICE as to plaintiff Stone and any future motion for appointment of counsel shall document Stone's inability to obtain legal assistance.

IT IS SO ORDERED.

_____/s/ Janet Bond Arterton United States District Judge

Dated at New Haven, Connecticut this 26th day of May, 2006.