

2004 WL 1944681

Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

Abdul SHARIFF, et al., Plaintiffs,
v.

Glenn S. GOORD, Commissioner of the
Department of Correctional Services, et al.,
Defendants.

No. 03Civ.7664(DAB)(HBP). | Aug. 31, 2004.

Opinion

MEMORANDUM OPINION AND ORDER

PITMAN, Magistrate J.

*1 By motion dated August 31, 2003 (Docket Item 2), plaintiffs move for *pro bono* counsel.¹ For the reasons set forth below, the motion is denied without prejudice to renewal.

The factors to be considered in ruling on a motion for *pro bono* counsel are well settled and include “the merits of plaintiff’s case, the plaintiff’s ability to pay for private counsel, [plaintiff’s] efforts to obtain a lawyer, the availability of counsel, and the plaintiff’s ability to gather the facts and deal with the issues if unassisted by counsel.” *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir.1986). Of these, “[t]he factor which command[s]

Footnotes

¹ In a civil case, such as this, the Court cannot actually “appoint” counsel for a litigant. Rather, in appropriate cases, the Court submits the case to a panel of volunteer attorneys. The members of the panel consider the case, and each decides whether he or she will volunteer to represent the plaintiffs. If no panel member agrees to represent the plaintiffs, there is nothing more the Court can do. *See generally Mallard v. United States District Court*, 490 U.S. 296 (1989). Thus, even in cases where the Court finds it is appropriate to request volunteer counsel, there is no guarantee that counsel will actually volunteer to represent plaintiffs.

the most attention [is] the merits.” *Id. Accord Odom v. Sielaff*, 90 Civ. 7659(DAB), 1996 WL 208203 (S.D.N.Y. April 26, 1996). As noted fifteen years ago by the Court of Appeals:

Courts do not perform a useful service if they appoint a volunteer lawyer to a case which a private lawyer would not take if it were brought to his or her attention. Nor do courts perform a socially justified function when they request the services of a volunteer lawyer for a meritless case that no lawyer would take were the plaintiff not indigent.

Cooper v. A. Sargenti Co., *supra*, 877 F.2d at 174. *See also Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir.1997) (“ ‘In deciding whether to appoint counsel ... the district judge should first determine whether the indigent’s position seems likely to be of substance.’ ”).

Even if I assume that plaintiffs, incarcerated inmates, lack the financial resources to retain counsel, their application establishes none of the other relevant factors.

Accordingly, plaintiffs’ motion for counsel is denied without prejudice to renewal. Any renewed motion should be accompanied by an affidavit that specifically addresses the relevant factors set forth above and provides details sufficient to establish that the foregoing factors are satisfied.