

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-061

JULY TERM, 2006

Charles Crannell

}

APPEALED FROM:

}

}

v.

}

Rutland Superior Court

}

Matthew F. Valerio, Defender General

}

}

DOCKET NO. 532-8-05 Rdcv

Trial Judge: Richard W. Norton

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals a decision of the superior court dismissing his complaint against the Defender General.

We reverse.

Plaintiff filed his complaint pursuant to V.R.C.P. 75, which provides for judicial review of an action or refusal to act by an agency of the State. Plaintiff alleged that the Defender General failed in his obligation to assign competent, conflict-free counsel to represent plaintiff in his petition for post-conviction relief. Specifically,

plaintiff alleged that there was a conflict of interest between the Prisoners Rights Office and himself, he was entitled to an attorney not associated with the PRO, and the Defender General failed to provide sufficient funding to retain such an attorney.

The Defender General filed a motion to dismiss for failure to state a claim under V.R.C.P. 12(b)(6). The Superior Court granted the motion, concluding that the few facts plaintiff alleged in his complaint did not support a claim under Rule 75. Because plaintiff had not alleged a specific conflict that prevented an attorney from the PRO from representing him, the superior court concluded that plaintiff's complaint boiled down to an assertion that he [was] dissatisfied with his appointed counsel. Noting that the Defender General's power to appoint counsel is discretionary, the superior court concluded that plaintiff had failed to demonstrate an extreme abuse of discretion. See 13 V.S.A. ' 5253(a) (establishing authority of Defender General to appoint counsel); Vt. State Employees= Assoc. v. Vt. Criminal Justice Training Council, 167 Vt. 191, 195 (1997) (discretionary act may be compelled under Rule 75 only where there is extreme abuse of discretion). The court denied plaintiff's request for appointed counsel for the Rule 75 proceeding itself, noting that appointed counsel is not generally a right in civil cases. See In re Chapman, 155 Vt. 163, 166 (1990) (noting that right to counsel in civil post-conviction proceedings is not constitutional, but derives from statute). The superior court further denied plaintiff's motion for reargument, in which he specified the nature of his conflict with the PRO and attached exhibits, including a 2002 letter from the PRO recognizing a conflict of interest preventing representation.

Given the factual questions raised by plaintiff's motion for reargument, it was premature to dismiss the complaint. See Brigham v. State, 2005 VT 105, & 11 (motion to dismiss should only be granted where, accepting plaintiff's alleged facts as true, it is beyond doubt that those facts would not entitle plaintiff to relief). Accordingly, we reverse for further proceedings on the question of whether an actual conflict of interest existed.

We review de novo the decision of whether plaintiff was entitled to counsel in this Rule 75 proceeding. See, e.g., Russell v. Armitage, 166 Vt. 392, 402-04 (1997) (reviewing entitlement to appointed counsel as question of law). The superior court correctly held that there is generally no right to an attorney in civil cases.

Reversed in part and remanded for further proceedings.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

John A. Dooley, Associate Justice

---

Marilyn S. Skoglund, Associate Justice