

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MICHAEL P. GALLAGHER,

Plaintiff,

vs.

CIVIL ACTION
No. 03-3454-SAC

J.L. SHELTON, et al.,

Defendants.

O R D E R

Plaintiff proceeds pro se and in forma pauperis on a complaint filed under 42 U.S.C. 1983, seeking damages and injunctive relief for the alleged interference of his rights under the First Amendment to practice his religious beliefs.

Before the court is plaintiff's motion for appointment of counsel (Doc. 11), which the court denies without prejudice. Having reviewed petitioner's claims, his ability to present said claims, and the complexity of the legal issues involved, the court finds the appointment of counsel in this matter is not warranted. See Long v. Shillinger, 927 F.2d 525, 526-27 (10th Cir. 1991)(factors to be considered in deciding motion for appointment of counsel).

Also before the court is plaintiff's motion for an "order of restraint"(Doc. 14) to prevent plaintiff's transfer from Norton Correctional Facility, or alternatively, to stay any action in this matter if plaintiff is without access to his legal materials. The court denies this request. Plaintiff identifies

no irreparable injury he might suffer in the absence of the relief sought, and the actions he seeks to deter involve matters falling within the expertise of corrections officials. Additionally, the motion is based on plaintiff's speculative allegations concerning his temporary transfer to Lansing Correctional Facility for medical treatment, and plaintiff's hypothetical concerns about any future transfer. See Country Kids 'N City Slick, Inc. v. Sheen, 77 F.3d 1280, 1283 (10th Cir. 1996)(stating requirements for temporary restraining order).

IT IS THEREFORE ORDERED that plaintiff's renewed motion for appointment of counsel (Doc. 11) is denied without prejudice.

IT IS FURTHER ORDERED that plaintiff's motion for a restraining order (Doc. 14) is denied.

IT IS SO ORDERED.

DATED: This 8th day of September 2005 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge