

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CHRISTOPHER DAVID BROWN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-3195-JTM
)	
JOHN COMPTON, et al.,)	
)	
Defendants,)	
_____)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's application for the appointment of counsel (Doc. 49). In evaluating whether to appoint counsel to represent plaintiff, the court considers (1) plaintiff's ability to afford counsel, (2) plaintiff's diligence in searching for counsel, (3) the merits of plaintiff's case, and (4) plaintiff's capacity to prepare and present the case without the aid of counsel. See Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1420-21 (10th Cir. 1992). Thoughtful and prudent care in appointing representation is necessary so that willing counsel may be located; however, the indiscriminate appointment of volunteer counsel to undeserving claims wastes a precious resource and may discourage attorneys from volunteering their time. Id. at 1421.

After careful consideration, the court declines to appoint counsel to represent plaintiff at this time. Plaintiff's pleadings demonstrate he has the capacity to prepare and articulate his claims without the aid of counsel. Moreover, this is not a legally complex case and, at this

early stage of the case, the disputed factual issues also appear uncomplicated.¹ Under the circumstances, the court declines to appoint counsel.

IT IS THEREFORE ORDERED that plaintiff's "application for appointment of counsel" (Doc. 49) is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 23rd day of March 2005.

S/ Karen M. Humphreys

KAREN M. HUMPHREYS
United States Magistrate Judge

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Under plaintiff's version of events, the prison guards used excessive force when returning plaintiff to his cell after a medical examination. The guards contend that plaintiff became uncooperative and/or aggressive while being returned to his cell and that they used appropriate force under the circumstances. In denying plaintiff's motion, the court expresses no opinion concerning the disputed facts.