

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

CLYDE HARNAGE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-3098-JTM
)	
R. D. SWANSON, et al.,)	
)	
Defendants.)	
)	
_____)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's renewed motion for the appointment of counsel (Doc. 49). For the reasons set forth below, the motion shall be DENIED.

The incidents giving rise to this lawsuit occurred while plaintiff was a prisoner at the Leavenworth prison facility. Plaintiff alleges that defendants were deliberately indifferent to his medical needs by allowing him to be exposed to second-hand smoke. Plaintiff also alleges that certain defendants physically assaulted him. As noted above, plaintiff seeks the appointment of counsel to represent him.

The court denied without prejudice plaintiff's original motion for the appointment of counsel, finding that plaintiff is articulate and has the capacity to prepare and present his claims without the aid of counsel. (Doc. 42, filed August 12, 2005). In his renewed motion, plaintiff argues that he is currently incarcerated at the Federal Medical Center at Butner, North Carolina (FMC Butner) which does not have law books. However, defendants counter

that FMC Butner has a computerized law library and plaintiff has access to legal resources similar to those at Leavenworth. In addition, defendants allege that plaintiff “has not raised an issue concerning access to specific legal materials or the law library through the BOP’s Administrative Remedy Program.”¹

Plaintiff’s argument that he lack access to legal materials is unpersuasive. Accordingly, his renewed motion for the appointment of counsel shall be denied.

IT IS THEREFORE ORDERED that plaintiff’s renewed motion for the appointment of counsel **(49)** is **DENIED**.

Dated at Wichita, Kansas this 30th day of January 2006.

S/ Karen M. Humphreys

KAREN M. HUMPHREYS
United States Magistrate Judge

¹

Defendants’ response is supported by an affidavit describing the FMC Butner law library resources.