

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

BRIAN L. BROWN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-3003-JTM-DWB
)	
MICHAEL GRAY, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL
AND RECOMMENDING DENIAL OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

The following motions are before the Court:

1. Plaintiff’s Motion/Letter requesting appointment of counsel and a Temporary Restraining Order or, in the alternative, an extension of 90 days to see what interference will stop. (Doc. 128); and Defendants’ Response in Opposition to Plaintiff’s Motion to Appoint Counsel, Motion for Extension of Time (Doc. 131);

2. Plaintiff’s Emergency Request for A Temporary Restraining Order form the Constitutional Violations of Defendant Simon Jones and for a 90 day extension of time to contact the Court (Doc. 129); and Defendants’ Response. (Doc. 130).

Having reviewed the parties’ submissions, the Court is prepared to rule on these pending motions.

BACKGROUND

The background of this case was summarized in the Court's Orders of June 18, 2008 (Doc. 75), and January 28, 2009 (Doc. 102), which are incorporated herein by reference. Further rulings and background are contained the Court's Order of August 4, filed simultaneously with this Order. *See* Doc. 132. Many of Plaintiff's complaints in the above motions are regurgitations of prior complaints by Plaintiff alleging that his current conditions of incarceration at the U.S. Penitentiary in Tucson, Arizona are preventing him from properly responding to orders of the court in this pending civil case. Defendants adamantly deny each and every allegation by Plaintiff.

DISCUSSION

1. Request for Appointment of Counsel.

In his initial filing (Doc. 128), Plaintiff makes a summary "request for Counsel." Plaintiff has previously requested appointment of counsel, which request was denied without prejudice to renewal. (Doc. 13 at 3.) Plaintiff then renewed his request for counsel, which was again denied. (Doc. 63 at 4-6.) In denying the renewed request, the Court noted that the denial was "without prejudice to renewal in the future should Plaintiff provide the Court with sufficient evidence of a compelling need for a court-appointed attorney." (Doc. 63 at 6.) In

the current motion, Plaintiff does not present any new evidence that would show a compelling need for appointment of counsel. As previously noted, Plaintiff has been able to file numerous pleadings in the present case and to prosecute similar claims in other cases, both at the district court and on appeal, without appointed counsel. *See e.g., Brown v. Leavenworth County, Kansas*, Case No. 08-3175-SAC; *Brown v. Leavenworth County, Kansas*, No. 08-3276, 2009 WL 1132358 (10th Cir., Apr. 28, 2009). Plaintiff's renewed request for appointment of counsel is hereby **DENIED**.

2. Requests for Temporary Restraining Order.

Both of the above motions seek an emergency restraining order against defendant Simon Jones relating to Plaintiff's current conditions of incarceration at the U.S. Penitentiary in Tucson, Arizona. This civil case, however, deals with Plaintiff's claims relating to his prior incarceration at the U.S. Penitentiary in Leavenworth, Kansas. Plaintiff has made similar complaints about his conditions of incarceration in prior motions. *See Doc. 97*. The Court has previously noted that these requests for orders concerning his current conditions of incarceration and requests for hearings concerning those motions are not properly before the Court in this case. *See Doc.102 at 8-10*.

Defendants urge that any such complaints require administrative exhaustion

under The Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997(e)(a). The Court agrees. See *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *Woodford v. Ngo*, 548 U.S. 81, 94 (2006); and *Jones v. Bock*, 549 U.S. 199, 211 (2007). Having failed to exhaust all administrative remedies concerning these complaints, the Court recommends that Plaintiff’s motions for a temporary restraining order (Doc. 128, 129) be **DENIED**. A copy of this recommendation shall be sent to Plaintiff via U.S. mail. Pursuant to 28 U.S.C. §636(b)(1), Fed. R. Civ. P. 72, and D.Kan. Rule 72.1.4, Plaintiff shall have ten days after service of a copy of these proposed findings and recommendations to serve and file with the U.S. District Judge assigned to the case, his written objections to the findings of fact, conclusions of law, or recommendations of the magistrate judge. Plaintiff’s failure to file such written, specific objections within the ten-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

3. Request for Extension of Time to Contact the Court.

In both of the motions, Plaintiff also moves the Court for a 90 day extension of time. (Doc. 128 at 2; 129 at ¶ 19.) In one motion, the request for an extension is stated as an alternative request to any temporary restraining order . (Doc. 128 at 2.) In the other motion, the extension of time “to contact this Court,” is

