

DJW/bh

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

McKINLEY ROSS,

Plaintiff,

CIVIL ACTION

v.

No. 07-3066-KHV-DJW

**CHERRY DONLEY,
CSI, Ellsworth Correctional Facility,
in her individual and official capacity, et al.,**

Defendants.

ORDER

At the November 27, 2007 scheduling conference, the Court orally ruled that Plaintiff would be appointed counsel for the limited purpose of representing Plaintiff at the telephone settlement conference scheduled for March 19, 2008. This Order will memorialize the Court's ruling.

Plaintiff, who is incarcerated, brings this action pursuant to 42 U.S.C. § 1983 against various prison officials for alleged violations of his civil rights. It is well settled that prisoners alleging civil rights violations have no constitutional right to counsel.¹ The Court may, however, appoint counsel in a civil action to represent a person proceeding in forma pauperis where the Court finds appointment to be appropriate.² The appointment of counsel under 28 U.S.C. § 1915(e) is a matter within the sound discretion of the district court.³ In considering whether to appoint counsel, the district court should take into account the following factors: "the merits of the litigant's claims, the

¹*Bethea v. Crouse*, 417 F.2d 504, 505 (10th Cir.1969).

²*See* 28 U.S.C. § 1915(e) ("The court may request an attorney to represent any person unable to afford counsel.").

³*Miller v. Glanz*, 948 F.2d 1562, 1572 (10th Cir. 1991).

nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims."⁴

The Court has reviewed the Court file, including the pleadings submitted by Plaintiff, and, applying the above factors, finds that Plaintiff is entitled to have counsel appointed to represent him in connection with the settlement conference. A separate order will be issued naming the counsel to be appointed after the Court has located the appropriate attorney to represent Plaintiff.

IT IS THEREFORE ORDERED that Plaintiff is appointed counsel to represent him in connection with the March 19, 2008 settlement conference.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 30th day of November, 2007.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties

⁴*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991)).