

DJW/sr

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

**DARSHAWN WITHERSPOON,**

**Plaintiff,**

**CIVIL ACTION**

**v.**

**No: 08-2102-KHV-DJW**

**WYANDOTTE COUNTY, KANSAS,**

**Defendant.**

**ORDER**

This matter is before the Court on Plaintiff's second Motion to Proceed Without Prepayment of Fees (doc. 8) and Plaintiff's second Motion for Appointment of Counsel in an action under 42 U.S.C. §1983 (doc. 9).

**1. Motion to Proceed Without Prepayment of Fees**

Plaintiff's first request to proceed in this action *in forma pauperis* was denied without prejudice on March 31, 2008 for failure to submit a complete financial affidavit.<sup>1</sup> In support of this second motion to proceed in this action *in forma pauperis*, Plaintiff has filed a second Affidavit of Financial Status (doc. 10).

Section 1915(a) of Title 28 of the United States Code sets forth the circumstances under which an individual is allowed to bring proceedings *in forma pauperis*. It provides that "any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an

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<sup>1</sup> See Order (doc. 3).

affidavit . . . that the person is unable to pay such fees or give security therefor.”<sup>2</sup> This Court therefore requires that the party seeking to proceed *in forma pauperis* submit a completed financial affidavit in support of his or her motion.

The Court has reviewed the Plaintiff’s second Affidavit of Financial Status (doc. 10) and finds that Plaintiff has failed to complete the second Affidavit of Financial Status. Plaintiff’s second Affidavit of Financial Status does not provide a specific net monthly or weekly income. The Court will therefore deny Plaintiff’s Motion to Proceed Without Prepayment of Fees (doc. 8) without prejudice. Plaintiff should re-file the Motion to Proceed Without Prepayment of Fees with a completed Affidavit of Financial Status attached.

## **2. Motion for Appointment of Counsel**

Plaintiff’s first Motion for Appointment of Counsel was denied because Plaintiff had not been granted leave to proceed in forma pauperis and Plaintiff had not paid the \$350.00 filing fee required by 28 U.S.C. § 1914(a), Plaintiff failed to identify the names of at least five lawyers who Plaintiff contacted and who were unable to represent Plaintiff, and Plaintiff’s financial affidavit was not complete. Plaintiff has filed a second Motion for Appointment of Counsel in an action under 42 U.S.C. §1983 (doc. 9). Plaintiff did identify the names of at least five lawyers she contacted but who were unable to represent Plaintiff. The Court has denied Plaintiff’s Motion to Proceed Without Prepayment of Fees (doc. 8). In addition, Plaintiff has not paid the \$350.00 filing fee as required by 28 U.S.C. § 1914(a).

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<sup>2</sup> 28 U.S.C. § 1915(a).

It is well settled that a party has no constitutional right to appointment of counsel in a civil case.<sup>3</sup> The district court may, however, in its discretion, appoint counsel in a civil action to represent a person proceeding *in forma pauperis*.<sup>4</sup> The appointment of counsel under 28 U.S.C. § 1915(e) is a matter within the sound discretion of the court.<sup>5</sup> In determining whether to appoint counsel, the court may consider a variety of factors, including: (1) the merits of the litigant's claims, (2) the nature of the factual issues raised in the claims, (3) the litigant's ability to present his/her claims, and (4) the complexity of the legal issues raised by the claims.<sup>6</sup>

The Court has reviewed the Court file, including the pleadings submitted by Plaintiff, and under the standards set forth above, finds that counsel should not be appointed for the following reasons. First, the Court has denied Plaintiff's Motion to Proceed Without Prepayment of Fees. If Plaintiff does not proceed *in forma pauperis*, then before the Court can appoint an attorney for Plaintiff, Plaintiff must pay the \$350.00 filing fee as required by 28 U.S.C. § 1914(a). Second, Plaintiff's Affidavit of Financial Status is not completed.

The Court will therefore deny Plaintiff's Motion for Appointment of Counsel without prejudice.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Proceed Without Prepayment of Fees (doc. 8) is denied without prejudice.

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<sup>3</sup>*Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989).

<sup>4</sup>*See* 28 U.S.C. § 1915(e) (“[t]he court may request an attorney to represent any person unable to afford counsel.”).

<sup>5</sup>*Miller v. Glanz*, 948 F.2d 1562, 1572 (10th Cir.1991).

<sup>6</sup>*Long v. Shillinger*, 927 F.2d 525, 527 (10th Cir. 1991) (citing *Maclin v. Freake*, 650 F.2d 885, 886 (7th Cir.1981)).

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (doc. 9) is denied without prejudice.

**IT IS FURTHER ORDERED** that before Plaintiff re-files a motion to proceed without prepayment of fees or re-files a motion for appointment of counsel, Plaintiff must complete the affidavit of financial status.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 2<sup>nd</sup> day of September 2008.

s/ David J. Waxse  
David J. Waxse  
U.S. Magistrate Judge

cc: All counsel and *pro se* parties