

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

Defendants.

¹See *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (construing motion filed within ten days of dispositive order as a motion to alter or amend judgment under rule 59(e)).

exercise of due diligence; or (3) the need to correct clear error or prevent manifest injustice.²

Such a motion does not permit a losing party to rehash arguments previously addressed or to present new legal theories or facts that could have been raised earlier.³

Here, plaintiff argues that this Court failed to consider her “Motion to Recusal” (Doc. 6). In fact, the motion was ruled upon by Magistrate Judge O’Hara (Doc. 7), who denied plaintiff’s request to recuse any and all judges who had or have been a member of the Kansas Bar Association, a defendant in this action, without prejudice to file another motion against the undersigned presiding judge in this matter. Such a motion was never filed, and plaintiff did not object to Judge O’Hara’s Order. To the extent plaintiff so moves at this time, the Court denies her request for recusal for the reasons set forth in Judge O’Hara’s well-reasoned Order, which it adopts and incorporates herein.

Plaintiff also requests application of 28 U.S.C. § 2243, which concerns issuance of a writ of habeas corpus for individuals in custody. Again, plaintiff’s argument is misplaced as this is a civil action and she is not in custody and does not qualify for habeas relief.

Finally, plaintiff requests “procedural assistance” from counsel to guide her “through the procedural applications for the future of this matter.” Plaintiff requests that her former counsel in the state court proceedings, Craig E. Collins, be permitted to assist her “without fear of repercussion or persecution.” Plaintiff does not seek Collins’ entry of appearance, but “only his guidance through the procedural applications for the future of this matter.” The Court is unaware of any prohibition on plaintiff seeking counsel of an attorney licensed to practice law

²*Brumark Corp.v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995).

³*Brown v. Presb. Healthcare Servs.*, 101 F.3d 1324, 1332 (10th Cir. 1996), *cert. denied*, 520 U.S. 1181 (1997).

for guidance and, as such, there is no relief for this Court to grant or deny. To the extent plaintiff is requesting appointment of counsel, however, her request is denied. There is no constitutional or statutory right to appointed counsel in a civil action.⁴ Before the court may appoint counsel, plaintiff must affirmatively show: (1) that she is financially unable to pay for counsel; (2) that she has diligently attempted to secure counsel; and (3) that her allegations are meritorious.⁵ Plaintiff has not even attempted to make such a showing.

IT IS THEREFORE ORDERED BY THE COURT that plaintiff's Motion to Strike (Doc. 70) is DENIED.

IT IS SO ORDERED.

Dated: September 10, 2010

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

⁴*Castner v. Colo. Springs Cablevision*, 979 F.2d 1417, 1420 (10th Cir. 1992).

⁵*Id.* at 1420.