

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NICHOLAS E. ARING,

Plaintiff,

v.

CASE NO. 10-3220-SAC

ROBERT HINSHAW,

Defendant.

O R D E R

This matter comes before the court on pro se complaint submitted by a prisoner incarcerated in a Kansas correctional facility, seeking relief under 42 U.S.C. § 1983 for the alleged violation of his First Amendment right to practice his religious beliefs.¹ Plaintiff's motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915 is granted, with no assessment of an initial partial filing fee. See 28 U.S.C. § 1915(b)(4) (where inmate has no means to pay initial partial filing fee, prisoner is not to be prohibited from bringing a civil action). Plaintiff remains obligated to pay the \$350.00 district court filing fee in this civil action, through payments from his inmate trust fund account as

¹Court records disclose that plaintiff filed a similar action in the state courts, which defendant Hinshaw removed to this court on December 28, 2010. See *Airing v. Hinshaw*, Case No. 10-3259-SAC. By an order entered this same date in that action, the court notified the parties that the two cases would be consolidated absent a timely objection. The court also granted plaintiff an opportunity to file a response to defendant Hinshaw's pending motion to dismiss, and notified plaintiff that absent a timely response, the motion would be considered and decided as an uncontested motion in the consolidated cases.

authorized by 28 U.S.C. § 1915(b)(2).

Also before the court is plaintiff's motion for appointment of counsel. Plaintiff has no right to the assistance of counsel in this civil action. *Durre v. Dempsey*, 869 F.2d 543, 647 (10th Cir.1989). Having reviewed petitioner's claims, his ability to present said claims, and the complexity of the legal issues involved, the court finds the appointment of counsel in this matter is not warranted at this time. See *Long v. Shillinger*, 927 F.2d 525, 526-27 (10th Cir.1991)(factors to be considered in deciding motion for appointment of counsel).

IT IS THEREFORE ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted, and that payment of the \$350.00 district court filing fee is to proceed as authorized by 28 U.S.C. § 1915(b)(2).

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel (Doc. 3) is denied without prejudice.

IT IS SO ORDERED.

DATED: This 15th day of February 2011 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge