

DJW/1

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

**RAYMOND E. SOMMERVILLE,**

**Plaintiff,**

**CIVIL ACTION**

**v.**

**No. 10-4119-KHV-DJW**

**REPUBLIC COUNTY HOSPITAL, et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Pending before the Court is Plaintiff's Motion to Appoint Counsel (ECF No. 4). For the reasons set forth below, the motion is denied.

Unlike in a criminal case, a party has no constitutional right to appointment of counsel in a civil case.<sup>1</sup> The court may, however, in its discretion, appoint counsel in a civil action to represent a person proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(e).<sup>2</sup> The appointment of counsel under § 1915(e) is a matter within the sound discretion of the district court.<sup>3</sup> In determining whether to appoint counsel, the district 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

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<sup>1</sup>*Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989).

<sup>2</sup>*See* 28 U.S.C. § 1915(e) (“[t]he court may request an attorney to represent any person unable to afford counsel.”). The Court has granted Plaintiff leave to proceed *in forma pauperis*. *See* Jan. 7, 2009 Order (doc. 5).

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

litigant's ability to present his/her claims, and (4) the complexity of the legal issues raised by the claims.<sup>4</sup>

This Court will also consider whether the plaintiff has made a diligent attempt to secure counsel through his/her own efforts.<sup>5</sup> The appointment of counsel under 28 U.S.C. § 1915(e) is appropriate only where the plaintiff is unable to retain counsel through his or her own efforts. Accordingly, this Court requires that a plaintiff seeking appointment of counsel first contact several attorneys (usually five) to determine whether they would agree to represent the plaintiff. Indeed, the Court's form motion for appointment of counsel, which Plaintiff filed in this case, contains the following provision:

I understand that before the court will consider appointing a lawyer for me I must contact the Lawyer Referral Service, 200 N. Broadway, Suite 500, Wichita, Kansas 67202, 1-800-928-3111, to get names of lawyers in the Kansas City area (both Missouri and Kansas attorneys) who handle cases like this case.<sup>6</sup>

The form then asks the plaintiff to certify that he/she has made a good faith effort to find a lawyer and requires the plaintiff to list the lawyers whom he/she has contacted.

In this case, Plaintiff left blank that portion of his Motion for Appointment of Counsel which asks him to list the attorneys he has contacted except to state: "Had a lawyer but still owe him \$2,000." This statement is not sufficient to show that Plaintiff has made a good faith and diligent effort to find an attorney to represent him in this particular matter.

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<sup>4</sup>*Long v. Shillinger*, 927 F.2d 525, 527 (10th Cir. 1991) (citing *Maclin v. Freake*, 650 F.2d 885, 886 (7th Cir.1981)).

<sup>5</sup>*Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 172 (2d Cir. 1989). *See also Castner v. Colo. Springs Cablevision*, 979 F.2d 1417, 1420 (10th Cir. (applying rule in employment discrimination case)).

<sup>6</sup>Mot. to Appoint Counsel (doc. 4) at. p.1 (emphasis in original)

If Plaintiff has not previously contacted the Lawyer Referral Service to obtain names of attorneys who handle cases such as the one he has filed, the Court encourages him to do so. The address of the Lawyer Referral Service is 200 N. Broadway, Suite 500, Wichita, Kansas 67202, and its telephone number is 1-800-928-3111. After Plaintiff has contacted at least five attorneys and is still unable to obtain legal representation, he may file a renewed motion seeking the appointment of counsel that identifies the particular attorneys whom he has contacted.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Appointment of Counsel (ECF No. 4) is denied.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 1st day of October 2010.

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

cc: All counsel and *pro se* parties