

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

SOLOMON ELIJAH SMITH,

Plaintiff,

vs.

CIVIL ACTION  
No. 11-3060-SAC

ERIC BELCHER, Commandant,  
USDB-Leavenworth,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on a complaint filed by a prisoner at the United States Disciplinary Barracks, Fort Leavenworth, Kansas. Plaintiff has submitted the full filing fee, and the court, having examined the materials filed in this case, finds that a responsive pleading is required.

Plaintiff also moves for the appointment of counsel. A party in a civil action has no constitutional right to the assistance of counsel in the prosecution or defense of such an action. *Bethea v. Crouse*, 417 F.2d 504, 505 (10th Cir. 1969). Rather, the decision whether to appoint counsel in a civil matter lies in the discretion of the district court, and the court should consider several factors, including the potential merits of the action, the plaintiff's ability to present the

case without the assistance of counsel, the plaintiff's efforts to obtain counsel, and the plaintiff's financial ability to do so. *Caster v. Colo. Springs Cablevision*, 979 F.2d 1417, 1420 (10<sup>th</sup> Cir. 1992). Having considered the materials filed by the plaintiff, the court finds he is able to clearly present the factual and legal bases for his claims and concludes he is able to present the matter without the appointment of counsel. The court therefore will deny the motion to appoint counsel but will do so without prejudice. Plaintiff may renew his request upon the further development of the record.

IT IS, THEREFORE, BY THE COURT ORDERED that the clerk of the court shall issue appropriate summons pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED plaintiff's motion to appoint counsel (Doc. 2) is denied without prejudice.

The clerk of the court is directed to transmit copies of this order to the parties herein and to transmit copies of the complaint and this order to the office of the United States Attorney for the District of Kansas.

**IT IS SO ORDERED.**

DATED: This 14<sup>th</sup> day of April, 2011, at Topeka, Kansas.

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