

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

E. FRANCES HAYCRAFT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 13-1254-MLB-KGG
	)	
FIDELITY MANAGEMENT d/b/a	)	
PONDEROSA APARTMENTS,	)	
	)	
Defendant.	)	
_____	)	

**ORDER ON  
MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES  
AND MOTION FOR APPOINTMENT OF COUNSEL**

In conjunction with her federal court Complaint alleging violations of her civil rights as well as the Americans with Disabilities Act, Plaintiff E. Frances Haycraft has filed a Motion to Proceed Without Prepayment of Fees (*IFP* Application, Doc. 3, sealed), with an accompanying Affidavit of Financial Status (Doc. 3-1, sealed). She also has filed a Motion for Appointment of Counsel. (Doc. 4.) Having reviewed Plaintiff's motions, as well as her Complaint (Doc. 1), the Court is prepared to rule.

**I. Motion to Proceed *In Forma Pauperis***

Under 28 U.S.C. § 1915(a), a federal court may authorize commencement of an action without prepayment of fees, costs, etc., by a person who lacks financial

means. 28 U.S.C. § 1915(a). In so doing, the court considers the affidavit of financial status included with the application. *See id.*

There is a liberal policy toward permitting proceedings *in forma pauperis* when necessary to ensure that the courts are available to all citizens, not just those who can afford to pay. *See generally, Yellen v. Cooper*, 828 F.2d 1471 (10<sup>th</sup> Cir. 1987). In construing the application and affidavit, courts generally seek to compare an applicant's monthly expenses to monthly income. *See Patillo v. N. Am. Van Lines, Inc.*, No. 02-2162, 2002 WL 1162684, at \*1 (D.Kan. Apr. 15, 2002); *Webb v. Cessna Aircraft*, No. 00-2229, 2000 WL 1025575, at \*1 (D.Kan. July 17, 2000) (denying motion because "Plaintiff is employed, with monthly income exceeding her monthly expenses by approximately \$600.00").

In her supporting financial affidavit, Plaintiff indicates she is 78 years old and single. (Doc. 3-1, at 1.) She lists no dependents. (*Id.*, at 2.) She is not employed, but lists an amount received from Social Security benefits and sizeable amount from "pensions, trust funds, annuities or life insurance" over the past 12 months. (*Id.*, at 4.)

Plaintiff does not own real property, but does own a modest automobile, for which she owes more than its current value. (*Id.*, at 3-4.) she indicates no cash on hand. (*Id.*, at 4.) She enumerates reasonable monthly expenses, including rent,

utilities, and telephone. (*Id.*, at 6.) She also has numerous, significant, other monthly expenses, including medications, a storage facility, a credit card payment, and a “senior monitor.” (*Id.*, at 5.) She has previously filed for bankruptcy. (*Id.*, at 6.)

Considering all of the information contained in the financial affidavit, Plaintiff has reasonable monthly expenses which, taken over the course of a year, slightly exceed her annual income. Thus, the Court finds Plaintiff has established that she is entitled to file this action without payment of fees and costs. The Court **GRANTS** Plaintiff leave to proceed *in forma pauperis* and directs that this case be filed without payment of a filing fee.

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

The Tenth Circuit has identified four factors to be considered when a court is deciding whether to appoint counsel for an individual: (1) plaintiff’s ability to afford counsel, (2) plaintiff’s diligence in searching for counsel, (3) the merits of plaintiff’s case, and (4) plaintiff’s capacity to prepare and present the case without the aid of counsel. *McCarthy v. Weinberg*, 753 F.2d 836, 838-39 (10<sup>th</sup> Cir. 1985) (listing factors applicable to applications under the IFP statute); *Castner v. Colorado Springs Cablevision*, 979 F.2d 1417, 1421 (10<sup>th</sup> Cir. 1992) (listing factors applicable to applications under Title VII). Thoughtful and prudent use of

the appointment power is necessary so that willing counsel may be located without the need to make coercive appointments. The indiscriminate appointment of volunteer counsel to undeserving claims will waste a precious resource and may discourage attorneys from donating their time. *Castner*, 979 F.2d at 1421.

Having granted Plaintiff *IFP* status, *supra*, the Court finds that she has a limited ability to afford counsel, satisfying the first *Castner* factor. The Court sees no glaring concerns on the face of Plaintiff's federal court Complaint, satisfying the third factor. (Doc. 1.)

Plaintiff has not, however, been diligent in her search for counsel, the second *Castner* factor. (See Doc. 4, 1-2.) The form motion provided by the Court clearly provides spaces for listing six attorneys who have been contacted regarding potential representation. Plaintiff lists only two. (*Id.*) Rather than instruct Plaintiff to contact an additional four attorneys prior to reaching a decision on this issue, the Court instead addresses the fourth *Castner* factor – Plaintiff's capacity to represent himself. 979 F.2d at 1420-21.

In considering this factor, the Court must look to the complexity of the legal issues and Plaintiff's ability to gather and present crucial facts. *Id.*, at 1422. The Court notes that the factual and legal issues in this employment discrimination case are not unusually complex. *Cf. Kayhill v. Unified Govern. of Wyandotte*, 197

F.R.D. 454, 458 (D.Kan. 2000) (finding that the “factual and legal issues” in a case involving a former employee’s allegations of race, religion, sex, national origin, and disability discrimination were “not complex”).

The Court sees no basis to distinguish Plaintiff from the many other untrained individuals who represent themselves *pro se* on various types of claims in Courts throughout the United States on any given day. To the contrary, Plaintiff has shown her ability to represent herself by drafting her federal court Complaint, which set out the operative facts to support her claims. (*See generally*, Doc. 1.) Further, although Plaintiff is not trained as an attorney, and while an attorney might present her case more effectively, this fact alone does not warrant appointment of counsel.

The Court therefore finds that Plaintiff appears to be an articulate individual with the ability to gather and present facts crucial to her case. As such, her Motion to Appoint Counsel is **DENIED**.

**IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Proceed Without Prepayment of Fees (Doc. 3, sealed) is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk’s office shall proceed to issue

summons in this case.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (Doc. 4) is **DENIED**.

IT IS SO ORDERED.

Dated at Wichita, Kansas, on this 18<sup>th</sup> day of July, 2013.

/S KENNETH G. GALE

KENNETH G. GALE

United States Magistrate Judge