

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

HERBERT J. BEYER,

Plaintiff,

v.

CASE NO. 17-3002-SAC

AUSTIN DESLAURIERS, et al.,

Defendants.

ORDER

This matter is before the Court on a Motion to Appoint Counsel filed by Plaintiff (ECF No. 20). For the reasons discussed below and because the Court by separate Order grants Defendants' motion to dismiss, this motion is denied.

There is no constitutional right to the appointment of counsel in a civil case. *Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989); *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995). The decision whether to appoint counsel in a civil matter lies within the discretion of the district court. *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). "The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *Steffey v. Orman*, 461 F.3d 1218, 1223 (10th Cir. 2006), quoting *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004). It is not enough "that having counsel appointed would have assisted [the prisoner] in presenting his strongest possible case, [as] the same could be said in any case." *Steffey*, 461 F.3d at 1223, quoting *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). In deciding whether to appoint counsel, the district court should consider "the merits of the

prisoner's claims, the nature and complexity of the factual and legal issues, and the prisoner's ability to investigate the facts and present his claims." *Rucks*, 57 F.3d at 979; *Hill*, 393 F.3d at 1115.

The Court concludes that appointment of counsel is not warranted given the factual and legal issues in this case and Mr. Beyer's ability to present his claims. Moreover, the Court, by separate Order, has found that Plaintiff's complaint fails to state a claim on which relief may be granted and must be dismissed, thus making this motion moot.

IT IS THEREFORE ORDERED Plaintiff's Motion to Appoint Counsel (ECF No. 20) is denied.

IT IS SO ORDERED.

DATED: This 7th day of June, 2019, at Topeka, Kansas.

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