

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

<b>ROBERT NORMAN SMITHBACK,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 19-1103-JWB-GEB</b>
	)	
<b>WILLIAM ANDREW SMITHBACK, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**ORDER APPOINTING COUNSEL**

This matter is before the Court on its own motion, on reconsideration of Plaintiff’s two earlier Motions for Appointment of Counsel (ECF Nos. 3 and 10). Although the motions were previously denied without prejudice by the undersigned (Memorandum and Orders, ECF Nos. 6 and 16), during discussion at the June 3, 2020 Status Conference, the Court sua sponte took up the issue of appointed counsel. (See Order on Status Conference, ECF No. 30.)

All parties to this matter are currently proceeding pro se. During the status conference, all parties indicated the prospects of resolving this matter short of trial are favorable. The Court believes such prospects improve dramatically with the assistance of appointed counsel. Finding “its perception of the merits and other factors relevant to the issue of appointment of counsel”<sup>1</sup> have now been altered as a result of the discussion

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<sup>1</sup> *Jones v. Maritz Research Co.*, Case No. 14-2467-SAC-GLR, 2014 WL 6632929, at \*3 (D. Kan. Nov. 21, 2014).

during the conference, the Court hereby appoints counsel to assist Plaintiff Robert Norman Smithback in a limited fashion.

Therefore, the Court provisionally appoints **Martin J. Peck**, a member in good standing of the bar of this Court, to represent Plaintiff for the limited purpose of advising and assisting Plaintiff in reviewing the filings of the Estate of Judy Smithback and communicating with Defendants on Plaintiff's behalf to discuss potential resolution of this case. Counsel's initial responsibility will be to confer with Plaintiff and make such investigation as may be necessary to determine what information is essential to achieve a meaningful mediation—whether formal or informal—and thereafter to assist Plaintiff through informal settlement efforts. If any at time Mr. Peck feels that formal mediation would be more successful, he is free to contact the undersigned for assistance in that regard.

Mr. Peck is appointed pursuant to 28 U.S.C. § 1915(e) and may be reimbursed for his out-of-pocket expenses allowed under D. Kan. Rule 83.5.3(f)(1). His contact information is:

Martin J. Peck  
Security State Bank Building  
107 E. Harvey, 2nd Floor  
P.O. Box 236  
Wellington, KS 67152  
Phone: (620) 326-5997  
Fax (620) 326-6887  
Email: [peck@martinjpeck.com](mailto:peck@martinjpeck.com)

Mr. Peck is expected to participate in the follow-up Scheduling Conference currently scheduled for **July 10, 2020 at 10:00 a.m.** by telephone before the undersigned U.S. Magistrate Judge. All participants must call the **CONFERENCE LINE at 1-888-**

**363-4749 using ACCESS CODE 9686294.** Mr. Peck's progress to date will be discussed, as well as the need for any additional scheduling in this matter.

**IT IS THEREFORE ORDERED** that **Martin J. Peck**, a member in good standing of the bar of this Court, is hereby appointed to represent Plaintiff in this case pursuant to 28 U.S.C. § 1915(e) for the limited purpose of advising and assisting Plaintiff in preparing and participating in informal settlement efforts and/or formal mediation, and receiving service of all court filings from the date of appointment through mediation.

The clerk is directed to send this order to Plaintiff by U.S. Mail. Chambers will notify the Warden at the Stiles Unit regarding this appointment. Mr. Peck will be notified by email and through the Court's electronic filing system. Upon receipt of this order, Plaintiff is ordered to contact Mr. Peck at the contact information supplied above as soon as possible, to the extent he is able, to schedule an appointment for consultation.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas this 11th day of June, 2020.

s/ Gwynne E. Birzer  
GWYNNE E. BIRZER  
United States Magistrate Judge