

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

MICHAEL A. ROADENBAUGH,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 08-2178-CM-GLR
)	
CORRECT CARE SOLUTIONS, LLC)	
DR. SATCHELL,)	
DR. HOANG,)	
DAVID R. McKUNE, Warden)	
ROGER WERHOLTZ, Secretary of)	
Corrections)	
)	
Defendants.)	

ORDER

Pending before the Court is Plaintiff’s Motion for Appointment of Counsel (doc. 46). Plaintiff’s complaint asserts a claim under 42 U.S.C. §1983 for deliberate indifference to serious medical needs, and a state law claim for medical malpractice relating to the defendant physicians alleged refusal to surgically repair Plaintiff’s abdominal hernia. He requests that the Court appoint him counsel in this action because he has a very limited education and is unable to comprehend the language of pleadings filed. He further states that he is being assisted by another inmate who has very limited knowledge of the law and this assistance is not guaranteed because they are both subject to transfer at any time. As explained below, the motion is denied without prejudice to refile after the medical malpractice screening panel issues its written report.

Pro se prisoner Plaintiff filed this action in Leavenworth County District Court on February 29, 2008. On April 18, 2008, Defendant Correct Care Solutions removed the action to this Court. On May 5, 2008, Plaintiff filed a motion to remand the case back to state court. On July 7, 2008,

the Court denied Plaintiff's motion to remand. On December 2, 2008, the Court conducted a scheduling conference with the parties. On February 24, 2009, the Court granted in part and denied in part Plaintiff's Motion to Compel Screening Panel and convened a medical malpractice screening panel pursuant to K.S.A. 65-4901(a). The Court further stayed all discovery in this action pending a report of the screening panel. The stay is to remain in place until twenty days after the screening panel has issued its written determination pursuant to K.S.A. 60-3505.

It is well settled that a party has no constitutional right to appointment of counsel in a civil case.¹ The court may, however, in its discretion, appoint counsel in a civil action to represent a person proceeding *in forma pauperis*.² The appointment of counsel under 28 U.S.C. § 1915(e) is a matter within the sound discretion of the district court.³ In determining whether to appoint counsel under 28 U.S.C. § 1915(e), the Tenth Circuit has directed district courts to evaluate the following factors: "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims."⁴

In light of the Court's February 24, 2009 Memorandum and Order convening a medical malpractice screening panel and staying all discovery pending the panel's report, the Court will deny Plaintiff's Motion for Appointment of Counsel. This ruling will be without prejudice to any similar

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

²*See* 28 U.S.C. § 1915(e) ("[t]he court may request an attorney to represent any person unable to afford counsel.").

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

⁴*Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (citing *Rucks v. Boergemann*, 57 F.3d 978, 979 (10th Cir. 1995)).

motion after the screening panel has issued its report. Plaintiff has shown, by the pleadings filed in the case, that he possesses sufficient knowledge and ability to present his claims. He has further demonstrated his awareness of the procedural requirements with respect to convening a screening panel and has designated a health care provider for his screening panel member as set forth in K.S.A. 65-4901(b).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Appointment of Counsel (doc. 46) is denied without prejudice to any similar motion for appointment of counsel after the screening panel has issued its report.

Dated in Kansas City, Kansas on this 2nd day of April, 2009.

s/ Gerald L. Rushfelt
Gerald L. Rushfelt
United States Magistrate Judge

cc: All counsel and *pro se* parties