

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

**LARONE J. SMITH and
LAMEKOS GOODWIN,**

Plaintiffs,

v.

**KANSAS DEPARTMENT OF HEALTH
AND ENVIRONMENT, et al.,**

Defendants.

Case No. 14-2499-EFM

MEMORANDUM AND ORDER

Plaintiffs move for the appointment of counsel (Doc. 3). In determining whether to grant plaintiffs' request, the court is guided by *Castner v. Colorado Springs Cablevision*, 979 F.2d 1417 (10th Cir. 1992). The Tenth Circuit has identified four factors which are relevant to the district court's discretionary decision whether to appoint counsel: (1) plaintiffs' financial inability to pay for counsel; (2) plaintiffs' diligence in attempting to secure counsel; (3) the existence or nonexistence of meritorious allegations of discrimination and (4) plaintiffs' capacity to present the case without counsel. For purposes of the present order, the court will accept the veracity of plaintiffs' affidavits of poverty. The court also will accept plaintiffs' statement that at least five attorneys have declined to take this case. The court presently does not have sufficient information to fully evaluate factors 3 and 4.

The court **provisionally** appoints Patrick Turner to represent plaintiffs. Counsel's initial responsibility will be to confer with plaintiffs and make such investigation as may be necessary to determine whether he will recommend to the court that he be permanently appointed to represent plaintiffs. If, upon completion of his initial investigation, counsel does not wish to accept permanent appointment, he shall notify the court and, to the extent consistent with professional responsibility, report his reasons in order to assist the court in making its determination under factors 3 and 4 of the *Castner* test.¹

IT IS THEREFORE ORDERED that plaintiffs' motion for the appointment of counsel (**Doc. 3**) is **GRANTED** as set forth above.

The clerk is directed to send this order, along with a complete copy of the court file, to Patrick Turner. Upon receipt of this order, both plaintiffs are ordered to contact Mr. Turner at 316-269-2284 as soon as possible to schedule an appointment for consultation.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 8th day of January 2015.

s/ Karen M. Humphreys
KAREN M. HUMPHREYS
United States Magistrate Judge

¹ Under certain circumstances appointed counsel may be reimbursed for reasonable out-of-pocket expenses which the client is unable to pay. See D. Kan. Rule 83.5.3(e)(2) and (f) and 83.5.3.1.