

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

MATTHEW ESCALANTE,)
)
 Plaintiff,)
)
 v.)
)
 JANELLE ESCALANTE,)
)
 Defendant.)
)
 Case No: 22-cv-2485-TC-TJJ

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

This matter comes before the Court on Plaintiff's Motion to Appoint Counsel (ECF No. 11).

4). Plaintiff, proceeding *pro se* and *in forma pauperis*,¹ requests that the Court appoint counsel to represent him in this case. For the reasons set forth below, Plaintiff's motion for the appointment of counsel is denied without prejudice.

While a defendant in a criminal action has a constitutional right to be represented by an attorney, it is well settled that a party in a civil action has no right to appointment of counsel.² If a party is proceeding *in forma pauperis* under 28 U.S.C. § 1915(a), a court “may request an attorney to represent any person unable to afford counsel.”³ The appointment of counsel under 28 U.S.C. § 1915(e)(1) is a matter within the discretion of the district court.⁴ In determining

¹ See Order granting Plaintiff's Application to Proceed in District Court Without Prepaying Fees and Costs (ECF No. 9).

²*Lee v. Crouse*, 284 F. Supp. 541, 543-44 (D. Kansas 1967) (“There is no absolute right to appointment of counsel in either habeas corpus or civil rights actions.”).

³ 28 U.S.C. § 1915(e)(1).

⁴*Johnson v. Johnson*, 466 F.3d 1213, 1217 (10th Cir. 2006) (a district court has discretion to request an attorney to represent a litigant who is proceeding *in forma pauperis* under 28 U.S.C. § 1915(e)(1)).

whether to appoint counsel under § 1915(e)(1), the district court may consider a variety of factors, including: (1) the merits of the litigant's claims, (2) the nature of the factual issues raised in the claims, (3) the litigant's ability to present his/her claims, and (4) the complexity of the legal issues raised by the claims.⁵

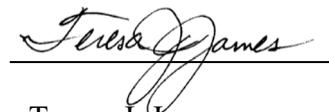
The Court will be issuing a Notice and Order to Show Cause requiring Plaintiff to show cause why this cause should not be dismissed for lack of subject-matter jurisdiction. The Court therefore denies Plaintiff's Motion for Appointment of Counsel without prejudice to re-filing, if the Court finds Plaintiff has established the Court has subject-matter jurisdiction over this case after he timely responds to the Court's Notice and Order to Show Cause.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's Motion for Appointment of Counsel (ECF No. 4) is denied without prejudice.

IT IS FURTHER ORDERED that a copy of this Order shall be mailed to Plaintiff.

IT IS SO ORDERED.

Dated January 19, 2023, at Kansas City, Kansas.



Teresa J. James
U.S. Magistrate Judge

⁵*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995).