

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

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

**ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL**

This matter comes before the Court on Plaintiff’s Motion to Appoint Counsel (ECF No. 4). Plaintiff, proceeding *pro se* and *in forma pauperis*,<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> The appointment of counsel under 28 U.S.C. § 1915(e)(1) is a matter within the discretion of the district court.<sup>4</sup> In determining

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<sup>1</sup> See Order granting Plaintiff’s Application to Proceed in District Court Without Prepaying Fees and Costs (ECF No. 9).

<sup>2</sup> *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.”).

<sup>3</sup> 28 U.S.C. § 1915(e)(1).

<sup>4</sup> *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.<sup>5</sup>

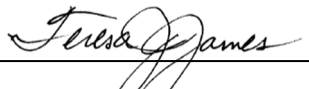
The Court will be issuing a Notice and Order to Show Cause requiring Plaintiff to show cause why this cause should not be dismissed for lack of subject-matter jurisdiction. The Court therefore denies Plaintiff's Motion for Appointment of Counsel without prejudice to re-filing, if the Court finds Plaintiff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

  
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Teresa J. James  
U.S. Magistrate Judge

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