

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SOLOMON ELIJAH SMITH,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3060-SAC

ERIC BELCHER, Commandant,

Defendant.

MEMORANDUM AND ORDER

This matter comes before the court on defendant's motions to stay discovery (Doc. 10) and for an extension of time to file an answer (Doc. 14) and on plaintiff's motion for the appointment of counsel (Doc. 11).

Defendant moves for a stay of discovery until a scheduling conference is conducted in this matter. However, because this matter is exempt from a Rule 26(f) planning meeting, unless otherwise ordered by the court, see D. Kan. R. 9.1(k), the court finds a stay of discovery until the responsive pleading is preferable to allow the initial development of the record. Because the answer may provide plaintiff with at least some of the material he seeks, the court will allow plaintiff to renew his motion after that pleading is filed.

Defendant's motion for an extension of time to respond to the complaint (Doc. 14) is granted.

Plaintiff moves for the appointment of counsel. A party in a civil action has no constitutional right to the assistance of counsel in the prosecution or defense of such an action. *Bethea v. Crouse*, 417 F.2d 504, 505 (10th Cir. 1969). Rather, the decision whether to appoint counsel in a civil matter lies in the discretion of the district court. *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). The court should consider "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." *Long v. Shillinger*, 927 F.2d 525, 526-27 (10th Cir. 1991).

The court has considered the record, and declines to appoint counsel at this stage in the proceedings. Plaintiff has presented a clear statement of his claims for relief, and it does not appear the issues of fact are unusually complex. The court will deny the motion without prejudice, and plaintiff may renew his request after the responsive pleading is filed. If plaintiff renews his request, he must present evidence to the court that he has unsuccessfully sought to retain counsel.

IT IS, THEREFORE, BY THE COURT ORDERED defendant's motion to stay discovery (Doc. 10) is granted.

IT IS FURTHER ORDERED defendant's motion for an extension of time to and including August 19, 2011 (Doc. 14) to file a response is granted.

IT IS FURTHER ORDERED plaintiff's motion to appoint counsel (Doc. 11) is denied without prejudice to the renewal of the motion.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 6th day of July, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge