

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

**TONY B. THOMAS,**

**Plaintiff,**

**v.**

**CHRISTOPHER BLAKE, et al.,**

**Defendants.**

**Case No. 15-3257-JAR-DJW**

**MEMORANDUM & ORDER**

The matter before the Court is on Plaintiff's Motion to Appoint Counsel (Docs. 57). Section 1915(e)(1) provides that the "court may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). In addition to determining the financial need of the movant, if the court determines the movant has a colorable claim, then it "should consider the nature of the factual issues raised in the claim and the ability of the plaintiff to investigate the crucial facts." *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (citing *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985) (citing *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981)). The Tenth Circuit has adopted several factors for determining whether appointment of counsel is appropriate, including: "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." *Id.* (citing *Williams v. Messe*, 926 F.2d 994, 996 (10th Cir. 1991) (citing *Maclin v. Freake*, 650 F.2d 885, 886 (7th Cir. 1981)).

After reviewing the factors used in determining whether to appoint counsel, the Court concludes that the factors weigh in favor of appointing counsel in this case. Most heavily weighing in Plaintiff's favor is the fact that his remaining claims survived screening under §

1915. (*See* Docs. 37 & 44.) Plaintiff has also made several attempts to find counsel. For these reasons, the Court will appoint counsel.

**IT IS THEREFORE ORDERED BY THE COURT** that Plaintiff's Motion to Appoint Counsel (Docs. 57) is granted. The Court will appoint counsel in a subsequent order.

**IT IS SO ORDERED.**

Dated August 29, 2017, at Kansas City, Kansas.

s/ David J. Waxse  
David J. Waxse  
U.S. Magistrate Judge