

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                                |   |                         |
|--------------------------------|---|-------------------------|
| DERRICK HOWARD,                | ) |                         |
|                                | ) |                         |
| Plaintiff,                     | ) |                         |
|                                | ) |                         |
| vs.                            | ) | Case No. 4:10CV2365 CDP |
|                                | ) |                         |
| BANK OF AMERICA, N.A., et al., | ) |                         |
|                                | ) |                         |
| Defendants.                    | ) |                         |

**MEMORANDUM AND ORDER**

On December 3, 2010, plaintiff Derrick Howard, a federal inmate currently incarcerated in Florida, filed this *pro se* complaint against numerous defendants, asserting that they misappropriated funds from corporate bank accounts in the name of BIS Investments, LLC. Howard also asserts that he is the sole member and shareholder of BIS. Several defendants have moved to dismiss the complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). In response, Howard moves for leave to amend his complaint, for appointment of counsel, and for an extension of time to respond to the motions to dismiss. For the reasons that follow, I will grant Howard’s motion to extend the time to respond, but I will deny his other motions without prejudice.

To begin with, Howard's motion for leave to amend must be denied because Howard failed to attach his proposed amended complaint. Put simply, before I can determine whether a motion to amend should be granted, I must be able to consider the proposed amended complaint. *See, e.g., Popoalii v. Correctional Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008) ("We have held, also, that granting leave to amend a complaint where the plaintiff has not submitted a proposed amendment is inappropriate."). Additionally, the Administrative Procedures for the Eastern District of Missouri require plaintiffs to attach their proposed amended complaints to motions seeking leave to amend. *See* United States District Court for the Eastern District of Missouri, Admin. Procedures for CM/ECF § 11(B) at p. 5. Accordingly, Howard's motion to amend will be denied without prejudice at this time. Howard is also reminded that, going forward, he must attach a proposed amended complaint to any motions to amend.

Howard next moves for appointment of counsel, but this motion will also be denied. There is no constitutional or statutory right to appointed counsel in civil cases. *Nelson v. Red field Lithograph Printing*., 728 F.2d 1003, 1004 (8th Cir. 1984). In determining whether to appoint counsel, I may consider several factors, including: (1) whether the plaintiff has presented non-frivolous allegations supporting his prayer for relief; (2) whether the plaintiff will substantially benefit

from the appointment of counsel; (3) whether there is a need to further investigate and present the facts related to the plaintiff's allegations; and (4) whether the factual and legal issues presented by the action are complex. *See Johnson v. Williams*, 788 F.2d 1319, 1322-23 (8th Cir. 1986); *Nelson*, 728 F.2d at 1005. Here, after considering these factors, I find that the facts and legal issues involved are not so complicated that the appointment of counsel is warranted at this time, and so I will deny Howard's motion to appoint counsel.


Finally, Howard moves for an extension of time to file his response to the pending motions to dismiss. Considering Howard's *pro se* status and his limited access to the prison library, I agree that an extension of time is appropriate in this case. In a previous Order, I granted Howard leave to pay his initial filing fee by April 8, 2011, and so I will also grant him leave until that same date to file his response to the motions to dismiss.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to amend his complaint [#26] is denied without prejudice to re-file with an attached proposed amended complaint.

**IT IS FURTHER ORDERED** that plaintiff's motion for an extension [#27] of time to file his response to the motions to dismiss is granted, and plaintiff's response is due no later than **April 8, 2011**.

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [#28] is denied.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 1st day of March, 2011.