

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

\$25,180.00 IN UNITED STATES
CURRENCY,

Defendant.

4:13-CV-3103

ORDER

This matter is before the Court on correspondence from the claimant, John Anderson, that the Court has filed as a motion for appointment of counsel (filing 58). That motion will be taken under advisement pending submission, by the claimant, of evidence to support his motion.

Anderson has no Sixth Amendment right to counsel in this proceeding, because it is civil, not criminal. *United States v. \$292,888.04*, 54 F.3d 564, 569 (9th Cir. 1995); *see Ward v. Smith*, 721 F.3d 940, 942 (8th Cir. 2013); *cf. United States v. \$141,770.00*, 157 F.3d 600, 606-07 (8th Cir. 1998). But the Court may request an attorney to represent any person unable to afford counsel. 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)); *see generally Mallard v. U.S. Dist. Ct.*, 490 U.S. 296 (1989). And an attorney appointed by the Court may be able to receive expenses or attorney fees awarded by the Court pursuant to [NEGenR 1.7\(g\)](#).

But a predicate to such an appointment or award is that the party for whom counsel is appointed be indigent, and at this point the only evidence before the Court on that point is Anderson's unsworn statement from nearly a year ago that he could not afford to retain his attorney. *See* filing 16. So, before proceeding any further, the Court will direct Anderson to complete Form AO 240, "Application to Proceed in District Court Without Prepaying Fees or Costs," in order to provide the Court with competent evidence that Anderson cannot afford to retain his own counsel. The Court has provided that form to Anderson by email, and attached it to this order, but it is also available on the Court's web page at <http://www.ned.uscourts.gov/forms>, or at <http://www.uscourts.gov/FormsAndFees/Forms/Viewer.aspx?doc=/uscourts/FormsAndFees/Forms/AO240.pdf>.

The Court will also delay trial of this matter, and suspend the deadline for objecting to the Magistrate Judge's findings and recommendations (filing

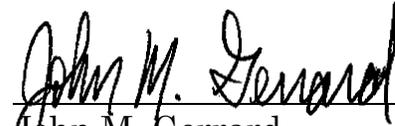
56) regarding Anderson's motion for summary judgment (filing 23), until Anderson's request for appointment of counsel is resolved.

IT IS ORDERED:

1. Anderson shall complete Form AO 240 and file the completed form with the Court on or before July 7, 2014.
2. The Clerk of the Court shall set a case management deadline of July 7, 2014 with the following docket text: Check on Form AO 240.
3. The pretrial conference set for July 1, 2014, and the jury trial set to commence on July 15, 2014, are canceled until further order of the Court.
4. The deadline for objecting to the Magistrate Judge's Findings and Recommendation (filing 56) is terminated until further order of the Court.

Dated this 19th day of June, 2014.

BY THE COURT:



John M. Gerrard
United States District Judge

UNITED STATES DISTRICT COURT
for the

Plaintiff/Petitioner
v.
Defendant/Respondent
Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. If incarcerated. I am being held at:
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. If not incarcerated. If I am employed, my employer's name and address are:

My gross pay or wages are: \$
, and my take-home pay or wages are: \$ per
(specify pay period)

3. Other Income. In the past 12 months, I have received income from the following sources (check all that apply):

- (a) Business, profession, or other self-employment
(b) Rent payments, interest, or dividends
(c) Pension, annuity, or life insurance payments
(d) Disability, or worker's compensation payments
(e) Gifts, or inheritances
(f) Any other sources

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name