

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HAROLD PAULSEN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOBBY HYEK; )  
 SARGENT BARBEE; and )  
 DOUGLAS COUNTY )  
 DEPARTMENT OF )  
 CORRECTIONS, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

8:14CV336

MEMORANDUM  
AND ORDER

This matter is before the court on Plaintiff’s renewed motion for appointment of counsel (Filing No. [35](#)). In *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996), the Eighth Circuit Court of Appeals explained that “[i]ndigent civil litigants do not have a constitutional or statutory right to appointed counsel.” Trial courts have “broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff’s ability to investigate the facts and present his claim.” *Id.* Having considered these factors, the request for the appointment of counsel will be denied without prejudice to reassertion.

On its own motion, the court notes that in a Memorandum and Order entered on January 16, 2016 (Filing No. [22](#)), it neglected to dismiss claims alleged against the Douglas County Department of Corrections, which Plaintiff named as a Defendant in his Amended Complaint (Filing No. [21](#)), although it was discussed that Plaintiff has not alleged a municipal policy or custom caused him to be deprived of a constitutional right. In any event, the Douglas County Department of Corrections is not a proper Defendant. See [Dan v. Douglas Cty. Dep’t of Corr., No. 8:06CV714, 2009 WL](#)

[483837, at \\*4 \(D. Neb. Feb. 25, 2009\)](#) (the Department of Corrections and other units within the DCCC and Douglas County lack the legal capacity to sue or be sued in their own names).

Accordingly,

IT IS ORDERED:

1. Plaintiff's motion for appointment of counsel (Filing No. [35](#)) is denied without prejudice.
2. Any and all claims alleged against the Douglas County Department of Corrections are dismissed without prejudice.

DATED this 12<sup>th</sup> day of September, 2016.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge