

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID A. SPENCER,

Plaintiff,

v.

No. 16cv841 MCA/KK

STATE OF NEW MEXICO, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on *pro se* Plaintiff's Request for Appointment of Counsel [sic], Doc. 11 filed November 24, 2016, 2016 ("Motion to Appoint Counsel"), and on his Motion to Allow Plaintiff(s) to E-file Documents, Doc. 33, filed May 11, 2017 ("Motion to E-file"). For the reasons stated below, the Court will **DENY** Plaintiff's Motion to Appoint Counsel and **GRANT** Plaintiff's Motion to E-file.

Plaintiff's Motion to Appoint Counsel

Plaintiff asks the Court to appoint counsel to represent him in this case. His Motion to Appoint Counsel states:

1. Plaintiff has filed the above cause in this court as a Pro-Se litigant.
2. Plaintiff now feels the need for representation in this Court of Law.
3. Plaintiff has been [prejudiced] against in [prior] hearings in the San Juan County District courts by Defendant Judge Sandra A. Price and other Defendants.
4. Due to the nature and magnitude of this cause Plaintiff should be represented by [counsel].
5. Due to the nature of the crimes committed against Plaintiff by the Defendants, Plaintiff is homeless, penniless, and has had his [reputation] destroyed by the Defendants.

Doc. 11.

“[C]ivil litigants have no right to counsel.” *Witmer v. Grady County Jail*, 483 Fed.Appx. 458, 462 (10th Cir. 2012). “Factors to be considered in deciding whether to appoint counsel [in a civil case] include the merits of the claims, the nature of the factual issues raised in the claims, the litigant’s ability to present the claims, and the complexity of the legal issues raised by the claims.” *Spencer v. City of Cheyenne*, 1 Fed.Appx. 863, 865 (10th Cir. 2001). When a Plaintiff is proceeding pursuant to 28 U.S.C. § 1915, “[t]he burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (“Only in those extreme cases where the lack of counsel results in fundamental unfairness will the district court's decision be overturned”).

The Court has reviewed Plaintiff’s Amended Complaint. *See* Doc. 8, filed September 14, 2016. Plaintiff was a party to a couple of civil cases in state court. Plaintiff alleges that Defendants conspired to obtain state court rulings unfavorable to Plaintiff and to bring false criminal charges against Plaintiff resulting in Plaintiff’s arrest and incarceration. The Defendants include the 11th Judicial District Court and State District Court Judge Sandra Price, the San Juan County Sheriff’s Office, the Sheriff and two Deputies, a State District Attorney and Deputy District Attorney, an attorney for an opposing party in one of the civil cases, and the San Juan County Adult Detention Center and its Medical Staff. Plaintiff asserts several claims of Constitutional violations and state law tort claims.

Having considered the nature and complexity of the factual and legal issues in Plaintiff’s Amended Complaint, the Court finds that Plaintiff is able to present his case adequately and the lack of legal counsel will not result in fundamental unfairness. The Court will deny Plaintiff’s

Motion to Appoint Counsel because he has not met his burden of convincing the Court that there is sufficient merit to his claims to warrant the appointment of counsel.

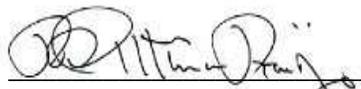
Plaintiff's Motion to E-file

Plaintiff asks the Court to allow him to e-file his documents. Allowing Plaintiff, who is proceeding *in forma pauperis*, to e-file in this case, which has multiple defendants, will conserve his limited financial resources. No responses opposing the Motion have been filed. The Court will grant Plaintiff's Motion to E-file documents.

IT IS ORDERED that:

(i) Plaintiff's Request for Appointment of Council [sic], Doc. 11 filed November 24, 2016, 2016, is **DENIED**; and

(ii) Plaintiff's Motion to Allow Plaintiff(s) to E-file Documents, Doc. 33, filed May 11, 2017, is **GRANTED**.



M. CHRISTINA ARMJO
CHIEF UNITED STATES DISTRICT JUDGE