

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GERARD EDWARD LEHNER,

Plaintiff,

- v -

Civ. No. 1:11-CV-729
(TJM/RFT)

INTERNAL REVENUE SERVICE,

Defendant.

RANDOLPH F. TREECE

United States Magistrate Judge

DECISION and ORDER

On October 4, 2011, this Court issued a Report-Recommendation and Order recommending that Lehner's Amended Complaint be dismissed due to his failure to state a cause of action and comply with Federal Rules of Civil Procedure 8 and 10. Dkt. No. 8. On October 18, 2011, Lehner filed a Letter-Motion seeking, *inter alia*, the appointment of an attorney. Dkt. No. 10. The Honorable Thomas J. McAvoy, Senior United States District Judge, issued an Endorsed Order that, in part, reserved upon a decision regarding the "appointment of counsel until such time the court considers Magistrate Judge's [Dkt. No. 8] Report-Recommendation." Dkt. No. 12.

Rather than await Judge McAvoy's decision regarding the pending Report-Recommendation, Lehner has filed yet another Motion for the Appointment of Counsel. Dkt. No. 13. In support of this Application, Lehner presents a list of attorneys whom he attempted to hire as counsel. Apparently all of these attorneys have declined to provide legal services to Lehner.

But, this and the previous Application for the appointment of counsel are

premature. Such Application will not be considered until Judge McAvoy has rendered a decision regarding this Court's Report-Recommendation and Order. Interestingly, as of this date, Lehner has not filed any objection to the Report-Recommendation, notwithstanding Judge McAvoy extending Lehner's time to file such objections. *See* Dkt. No. 12.

Likewise then, this current Application for the appointment of counsel is subject to Judge McAvoy's reservation and will not be considered until the Report and Recommendation has been ruled upon.

Lehner is urged not to file any similar motion until Judge McAvoy has acted.

IT IS SO ORDERED.

December 21, 2011
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge