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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

LESTER JON RUSTON,

Plaintiff,

v.

THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS; GORDON B.
HINCKLEY; VICTOR JAMES RUSTON;
MARGARET ELIZABETH RUSTON;
JERRY HENDERSON; ALLISON RUSTON-
SMITH; MEL CHADWICK; KENT
ROBERTSON; IAN JAMES RUSTON;
BRAD OATES; AND LARRY K.
HERCULES,

Defendants.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL**

Case No.: 2:06cv00526DB

Judge Benson

Magistrate Judge Nuffer

Defendants The Church of Jesus Christ of Latter-day Saints ("LDS Church" or "the Church"), Gordon B. Hinckley, and any other defendant (if any) sued in his or her capacity as an ecclesiastical leader in the LDS Church (the "Church Defendants"), through counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Appointment of Counsel.

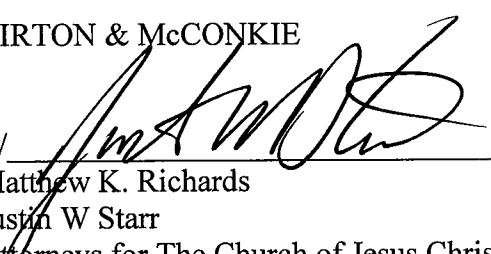
INTRODUCTION

The Prisoner Litigation Reform Act, 28 U.S.C. § 1915(e), permits the court to appoint counsel to represent an indigent plaintiff. But “[t]he burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985). For the reasons set forth in the Church Defendants’ motion to dismiss, Ruston’s claims are frivolous. Counsel should not be appointed. Ruston’s claims should be dismissed under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

DATED this 19th day of January, 2007.

KIRTON & McCONKIE

/s/


Matthew K. Richards

Justin W Starr

Attorneys for The Church of Jesus Christ of Latter-day Saints and Gordon B. Hinckley

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2007, I caused a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL** to be mailed to the following:

Lester J. Ruston, No. 26834-177
P.O. Box 4000
Springfield, Missouri 65801

_____/s/ Debra Domenici_____