

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Bernard L. Smith v. ADE-WIFCO Steel Products, et al.

No. 25-3136-DDC-BGS (D. Kan. Mar. 23, 2026) · No. 25-3136-DDC-BGS · Decided March 23, 2026

SUMMARY

The United States District Court for the District of Kansas denied pro se plaintiff Bernard L. Smith’s second motion for appointment of counsel in an employment discrimination action. Applying the factors governing appointment of counsel in civil cases, the court found that although plaintiff had proceeded in forma pauperis and diligently sought counsel, his ability to present the case and the unresolved merits did not support appointment.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Brooks G. Severson
JURISDICTION	United States District Court for the District of Kansas
DECIDED	March 23, 2026
DOCKET	25-3136-DDC-BGS
DISPOSITION	other
PROCEDURAL POSTURE	Pro se plaintiff in an employment-discrimination action moved for appointment of counsel under 28 U.S.C. § 1915(e)(1). The magistrate judge denied the motion.
STANDARD OF REVIEW	Abuse-of-discretion framework governing discretionary appointment of counsel in civil cases; the court applied the Castner factors.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; persuasive rather than precedential
PARTIES	Bernard L. Smith v. ADE-WIFCO Steel Products, et al.

TOPICS

- civil procedure
- employment discrimination

PRACTICE AREAS

- civil procedure
- employment law
- civil rights

QUESTIONS PRESENTED

1. Whether the court should appoint counsel for an indigent pro se plaintiff in a civil employment-discrimination action under 28 U.S.C. § 1915(e)(1).
2. Whether the Castner factors—financial ability, diligence in seeking counsel, merits, and capacity to investigate and present the case—supported appointment of counsel.

HOLDINGS

1. Appointment of counsel was not warranted because, despite Smith's indigence and diligence in seeking counsel, the unresolved merits factor was nondeterminative and Smith had not shown that he lacked the capacity to investigate and present his claims without counsel.

KEY QUOTATIONS

“The decision whether to appoint counsel “is left to the sound discretion of the district court.””

“The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.”

“Because the merits remain unresolved and Plaintiff’s capacity to present his case weighs against appointment, the balance does not support granting the motion.”

FACTUAL BACKGROUND

Bernard Smith brought a pro se employment-discrimination action and was granted in forma pauperis status. He represented that he could not afford counsel, had contacted eight attorneys, and would need discovery, depositions, and possibly expert witnesses. The court noted that Smith had filed a coherent response to defendants' dispositive motion containing factual and legal analysis and found no unusual complexity requiring appointed counsel.

PROCEDURAL HISTORY

Smith filed the action pro se in July 2025 and was granted leave to proceed in forma pauperis. A prior motion for appointment of counsel was denied after the court found that the issues were not complex and that Smith appeared capable of presenting the facts and arguments. After defendants filed a motion to dismiss and a motion to strike, Smith filed a second motion for appointment of counsel. The court denied the second motion because, although Smith satisfied the financial-need and diligence factors, the merits factor was unresolved and his demonstrated capacity to present the case without counsel weighed against appointment.

DISPOSITION

other

CASES CITED

- Hill v. SmithKline Beecham Corp., 393 F.3d 1111, 1115 (10th Cir. 2004)
- Beaudry v. Corr. Corp. of Am., 331 F.3d 1164, 1169 (10th Cir. 2003)

- *Lynn v. Willnauer*, Case No. 19-3117-HLT, 2021 WL 1390384, at *22 (D. Kan. Apr. 13, 2021)
- *Commodity Futures Trading Comm’n v. Brockbank*, 316 F. App’x 707, 712 (10th Cir. 2008)
- *Lyons v. Kyner*, 367 F. App’x 878, n.9 (10th Cir. 2010)
- *McCarthy v. Weinberg*, 753 F.2d 836, 838-39 (10th Cir. 1985)
- *Castner v. Colorado Springs Cablevision*, 979 F.2d 1417, 1420-22 (10th Cir. 1992)
- *Martinez v. Pickering*, No. 22-CV-4027-JWB-RES, 2022 WL 1604616, at *2 (D. Kan. May 20, 2022)
- *Lane v. Brewer*, No. 07-3225-JAR, 2008 WL 3271921, at *2 (D. Kan. Aug. 7, 2008)
- *Cox v. Ann (LNU)*, 924 F. Supp. 2d 1269 (D. Kan. 2013)
- *McLain v. Sedgwick Co. Sheriff’s Office*, No. 25-4036-JWB-BGS, 2025 WL 1696525, at *2-3 (D. Kan. June 17, 2025)