

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

|                                    |   |                             |
|------------------------------------|---|-----------------------------|
| <b>RONALD A. BAKER, et al.,</b>    | ) |                             |
|                                    | ) |                             |
| <b>Plaintiffs,</b>                 | ) |                             |
|                                    | ) |                             |
| <b>v.</b>                          | ) | <b>Case No. 14-1356-JTM</b> |
|                                    | ) |                             |
| <b>AUSTIN DesLAURIERS, et al.,</b> | ) |                             |
|                                    | ) |                             |
| <b>Defendants.</b>                 | ) |                             |
|                                    | ) |                             |

**ORDER**

This matter is before the court on the plaintiffs’ joint motion for appointment of counsel (Doc. 28). The court has reviewed the motion and declaration of efforts to obtain counsel and finds that the plaintiffs’ motion should be provisionally GRANTED. However, for the reasons set forth below, selection of specific counsel shall be DEFERRED and this case temporarily STAYED pending the development of similar cases in other districts.

In determining whether to grant plaintiffs’ request, the court is guided by *Castner v. Colorado Springs Cablevision*, 979 F.2d 1417 (10th Cir. 1992). The Tenth Circuit has identified four factors which are relevant to the district court’s discretionary decision whether to appoint counsel: (1) plaintiffs’ financial inability to pay for counsel; (2) plaintiffs’ diligence in attempting to secure counsel; (3) the existence or nonexistence of meritorious allegations and (4) plaintiffs’ capacity to present the case without counsel.

Plaintiffs have been allowed to proceed in forma pauperis (Doc. 31); therefore their inability to afford counsel has been established. The court will accept the veracity of plaintiffs' statements that at least five attorneys have declined to take this case. However, although the court believes plaintiffs' claims may be meritorious and worthy of appointed counsel, it presently does not have sufficient information to *fully* evaluate the remaining factors.

The court has recently reviewed multiple cases of a similar nature involving sexually violent predator ("SVP") commitment programs in the districts of Minnesota, Missouri, Illinois, New Jersey, and Washington.<sup>1</sup> The court has also communicated directly with plaintiffs' counsel in the Missouri case to be better informed about characteristics which may be desirable for appointed counsel in this unique proceeding. Two cases, in Minnesota and Missouri, are set for trial on the issue of the state actors' liability for alleged constitutional violations in aspects of their SVP treatment programs. The court finds that resolution of liability in those trials could assist this court in evaluating the merits of this case.

**IT IS THEREFORE ORDERED** that plaintiffs' motion for the appointment of counsel (**Doc. 28**) is provisionally **GRANTED** as set forth above; however, the selection of appointed counsel shall be **DEFERRED** pending further investigation by the court.

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<sup>1</sup> See *Karsjens v. Jesson*, Case No. 11-3659-DWJ-JJK (D. Minn.); *Van Orden v. Healthlink*, Case No. 09-971-AGF (E.D. Mo.); *Hargett v. Adams*, Case No. 02-1456 (N.D. Ill.); *Alves v. Main*, Case No. 01-789-DMC (D. N.J.); *Turay v. Seling*, Case No. 91-664-WD (W.D. Wash.) (consolidated with four related cases).

**IT IS FURTHER ORDERED** that this case shall be **STAYED** pending the court's review of the scheduled trials in the District of Minnesota<sup>2</sup> (currently scheduled for February 9, 2015) and the Eastern District of Missouri<sup>3</sup> (currently set for April 20, 2015).

The court will continue to review the related actions and investigate appropriate counsel during the period of stay. The clerk is directed to send a copy of this order to each pro se plaintiff.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas this 9th day of February 2015.

s/ Karen M. Humphreys  
KAREN M. HUMPHREYS  
United States Magistrate Judge

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<sup>2</sup> *Karsjens v. Jesson*, Case No. 11-3659-DWJ-JJK (D. Minn.).

<sup>3</sup> *Van Orden v. Healthlink*, Case No. 09-971-AGF (E.D. Mo.).