

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE FOR THE  
WESTERN DIVISION**

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**In re**

**WILLIAM LAWRENCE HOGAN,**

**Case No. 92-25931-K**

**Debtor.**

**Chapter 13**

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**MEMORANDUM AND ORDER RE DEBTOR'S MOTION FOR  
APPOINTMENT OF COUNSEL**

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This matter comes before the court on a postconfirmation motion filed by the above-named debtor, William Lawrence Hogan ("Mr. Hogan"), requesting the court to appoint counsel to represent him in his chapter 13 case.

By virtue of 28 U.S.C. § 157 (b)(2)(A) this is a core proceeding. The court has jurisdiction of this action under 28 U.S.C. §§ 1334(a)-(b) and 157(a) and Miscellaneous District Court Order No. 84-30 entered on July 11, 1984. Without oral arguments, the following shall constitute the court's findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052.

Based on the case record as a whole, the relevant background facts may be briefly summarized as follows. On June 3, 1992, Mr. Hogan, filed this chapter 13 case. His chapter 13 plan was subsequently confirmed on August 7, 1992, providing for direct payments of \$1,552.00 per month to the chapter 13 trustee and a thirty percent (30%) distribution to unsecured, nonpriority creditors. Mr. Hogan is a single man with no minor children although he apparently provides financial assistance to two grandchildren ages 16 and 17 when this case was filed. According to his original Schedule I, Mr. Hogan's monthly income is \$3,800.00, which is

generated from his laundromat and real estate businesses. Mr. Hogan's monthly expenses, as reflected in his original Schedule J, are \$2,861.00, which includes \$100.00 per month for attorney's fees. Mr. Hogan's excess income is scheduled at \$939.00 per month.

At the outset of this chapter 13 case, Mr. Hogan retained counsel for a retainer fee of \$700.00. On April 10, 1997, an order was entered granting the motion of Mr. Hogan's counsel to withdraw as counsel of record. (Mr. Hogan has appealed that order.) Mr. Hogan now seeks the appointment of counsel by this court to represent him in his chapter 13 case.

Simply put, unlike criminal suits, there is no right to counsel in a civil suit. *Lassie v. Dept. of Social Services*, 452 U.S. 18, 25-27 (1981). Civil litigants may in fact proceed in federal courts without attorney representation by virtue of 28 U.S.C. § 1654. Courts do, however, have discretion under 28 U.S.C. § 1915(d) to request an attorney to represent an indigent civil litigant by considering the particular facts and circumstances. See *Peterson v. Nader*, 452 F.2d 754, 757 (8th Cir. 1971); *State of Nebraska v. Couple*, 84 B.R. 163 (Bankr. D. Neb 1988). Since section 1915(d) of title 28 does not authorize the expenditure of federal funds for counsel, the court may only request an attorney to represent an individual rather than appoint an attorney, if such individual is, for example, impoverished. *Rhodes v. Houston*, 258 F.Supp. 546, 579 (D. Neb. 1966), *aff'd*, 418 F.2d 1309 (8th Cir. 1969), *cert. denied*, 397 U.S. 1049 (1970).

The mere fact that Mr. Hogan has filed a case under the Bankruptcy Code is not itself sufficient to establish that he is indigent, as required by 28 U.S.C. § 1915(d). See *United States v. McQuade*, 579 F.2d 1180 (9th Cir. 1978), *appeal after remand*, 647 F.2d 938 (9th Cir. 1981); *cert. denied*, 455 U.S. 958 (1982). Furthermore, Mr. Hogan has not set forth any exceptional

circumstances or filed an appropriate affidavit that would warrant the court to request counsel to represent him.

It is emphasized that this is a chapter 13 case. To be eligible for relief under chapter 13, an individual debtor must have income that is sufficiently stable and regular so that payments under a chapter 13 repayment plan can be made. Self-employed, sole proprietors are eligible for relief under chapter 13 by virtue of the expanded eligibility under the Bankruptcy Reform Act of 1978. 11 U.S.C. §§ 109(e) and 101(30). This case record does not reveal that Mr. Hogan is a pauper. Quite the contrary is apparently true. Mr. Hogan's "Summary of Schedules" filed herein reflects total assets of \$147,450.00 and total liabilities of \$125,921.00.

IT IS ORDERED AND NOTICE IS HEREBY GIVEN that Mr. Hogan's motion for appointment of counsel is hereby denied without legal prejudice to his filing later of another motion upon, for example, changed circumstances.

**BY THE COURT**

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**David S. Kennedy**  
**Chief United States Bankruptcy Judge**

**Dated: May 21, 1997**

cc: Mr. William Lawrence Hogan, Debtor  
1239 Rutland  
Memphis, TN 38114

cc: William M. Gotten, Esquire  
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