The relief described hereinbelow is SO ORDERED.

SIGNED this 26th day of March, 2024.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

SEAN KRISTIAN TARPENNING,

Debtor.

Case No. 23-21455
Chapter 7

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

This matter comes before the Court on debtor Sean Tarpenning's motion for appointment of counsel (ECF 173). Although Tarpenning cites no authority in his motion, 28 U.S.C. § 1915(e)(1) provides, "The court may request an attorney to represent any person unable to afford counsel." (Although courts sometimes refer to this as "appointment" of counsel, § 1915(e) does not authorize a court to compel representation or to reimburse attorneys for their time. *See Rachel v. Troutt*, 820

F.3d 390, 397 & n.7 (10th Cir. 2016); *but see* D. Kan. Rule 83.5.3.1 (authorizing reimbursement of out-of-pocket expenses)).

Here, Tarpenning's motion states that (1) he is indigent and unable to retain counsel (ECF 173 ¶ 1);[1] (2) this case "involves [his] basic human needs, including the retention of his home and sole source of income" (*id.* ¶ 2); (3) he "suffers from severe mental illness, including indications of schizophrenia and bipolar disorder," and "takes medication that impairs his ability to concentrate and organize his affairs" (*id.* ¶ 3); and (4) this case "involves complex bankruptcy laws and procedures with which [he], a layperson without legal training, cannot effectively contend" (*id.* ¶ 4). Items (1), (2), and (4), which are common to many (if not most) individual bankruptcy cases, do not justify a request for counsel under § 1915(e). *See In re Fitzgerald*, 167 B.R. 689, 692 (Bankr. N.D. Ga. 1994) ("If financial inability to hire a lawyer and lack of expertise in bankruptcy law justified court-appointed counsel, a great many Chapter 7 debtors would qualify . . . ."). And as to item (3), Tarpenning's medical issues do not—given his participation in the case thus far[2]—seem to impede his ability to present coherent, intelligent arguments to the court.

---

[1] While Tarpenning also alleges that he "has been prejudiced against by the colluding attorneys in the Kansas Bankruptcy Bar," ECF 173 ¶ 1, the Court must disregard conclusory allegations in determining whether his motion states a claim, as it were, for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)); Fed. R. Bankr. P. 9014(c) ("The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply."); Fed. R. Bankr. P. 7012(b) ("Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings.").

[2] *See* ECF 35 (motion to extend time to file schedules and SOFA); ECF 53 (objection to venue transfer); ECF 69 (motion to extend deadlines); ECF 76 (objection to stay relief); ECF 87 (brief opposing venue transfer); ECF 114-122 (objection to stay relief

Assuming that § 1915(e) applies in bankruptcy cases,[3] a court reviewing a motion under § 1915(e) should consider the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims. *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995); *see Rachel*, 820 F.3d at 397. The first factor, "merits," does not exactly apply to Tarpenning's bankruptcy case,[4] given

---

with exhibits); ECF 127 (motion to stay bankruptcy proceedings); ECF 142 (brief on tax records); ECF 143 (motion for venue transfer); ECF 152 (motion to quash); ECF 154 (notice of equitable interest); ECF 165 (brief addressing contempt); ECF 170-171 (amended Schedules A, B, and C); ECF 172 (objection to motion to strike); ECF 174 (brief on fee disclosures and tax records); ECF 177 (notice of amended Schedule C); ECF 178 (debtor's declaration concerning schedules); ECF 192 (motion to quash and for sanctions); ECF 208 (motion for reconsideration of order denying motion to quash).

[3] In *United States v. Kras*, the Supreme Court held that § 1915(a), which permits cases to be filed *in forma pauperis*, does not apply in bankruptcy cases. *See* 409 U.S. 434, 440 (1973). Since then, a number bankruptcy courts have questioned whether *Kras* applies to § 1915(e) or its predecessor, the former § 1915(d). *See, e.g.*, *In re Fitzgerald*, 167 B.R. 689, 691 (Bankr. N.D. Ga. 1994) ("Since § 1915(a) is not available in bankruptcy cases, [the former] § 1915(d) is probably not applicable to bankruptcy cases."). However, the Court's holding in *Kras* was based on a "positive and specific" statutory provision that "overrode the earlier general provisions of [section] 1915(a)." *See Kras*, 409 U.S. at 439 (observing that "by the passage of the Referees' Salary Bill in 1946, . . . bankruptcy petitions in forma pauperis were abolished"). If there is no analogous statutory provision addressing requests for counsel in bankruptcy cases (and this Court is not aware of any), then the reasoning of *Kras* would not extend to § 1915(e). Moreover, the former § 1915(d) applied to "any such person," i.e., any person eligible to file a case *in forma pauperis* under § 1915(a)—whereas the current § 1915(e) now applies to "any person." This change to the statutory language suggests that Congress did *not* want *Kras* to exclude bankruptcy cases from application of § 1915(e).

[4] While the "merits" factor *would* apply to an adversary proceeding (including one for dischargeability of particular debts under § 523 and/or for denial of discharge altogether under § 727), Tarpenning is already represented by counsel in three of the four adversaries pending against him, *compare* Adv. Nos. 22-6048, 22-6050 (*Redmond v. Tarpenning*), *and* Adv. No. 23-6001 (*Williamson v. Always Ready*),

that there is no constitutional right to a discharge of one's debts in bankruptcy, *see Kras*, 409 U.S. at 446, and because Tarpenning's eligibility for Chapter 7 relief under § 109(b) or § 707(b) is not at issue. The second factor, "nature of the factual issues," weighs against Tarpenning's request because the factual issues raised by his bankruptcy petition and schedules are of his own personal finances and transactions, and thus within his personal knowledge.[5] The third factor, "litigant's ability to present his claims," likewise weighs against his request; Tarpenning has clearly demonstrated an ability to present articulate, intelligent arguments, both verbally and in writing. Although most of those arguments did not succeed, the flaws lay in the strength of the arguments—not Tarpenning's ability to convey them.[6] (It is not enough to say that an attorney might assist Tarpenning in presenting stronger arguments, because "the same could be said in any case." *See Rucks*, 57 F.3d at 979.) As to the fourth factor, "complexity of the legal issues," the Court cannot predict what legal issues might arise in the future; the Court can only

---

with Adv. No. 24-6008 (*Kraan Invs (USA) LLC v. Tarpenning*)—and his request for counsel only applies to the main bankruptcy case in any event.

[5] Compare a Chapter 7 bankruptcy petition and schedules, which use plain words to explain the information a debtor must provide, with *McCarthy v. Weinberg*, 753 F.2d 836, 839 (10th Cir. 1985), in which the plaintiff's claim against prison officials under 42 U.S.C. § 1983 involved "complex" medical issues requiring "presentation of expert opinion" and "development by a legal professional trained in the arts of advocacy and legal reasoning."

[6] *Cf. Pickett v. Chicago Transit Auth.*, 930 F.3d 869, 871 (7th Cir. 2019) (Easterbrook, J.) ("If lawyers misunderstood Pickett's contentions because he is inarticulate, then a judge might have a useful role to play in recruiting counsel, but if Pickett conveyed his situation well and counsel deemed the claim feeble, then it would be inappropriate for a court to intervene.").

observe that no complex issues have arisen thus far; that none are pending now; and that none are apparent from Tarpenning's bankruptcy petition and schedules.

Having considered the applicable factors, the Court concludes that Tarpenning's motion for appointment of counsel is hereby denied.

IT IS SO ORDERED.

###