

1 “There is no constitutional right to appointed counsel” Ivey v. Board of
2 Regents of University of Alaska, 673 F.2d 266, 269 (9th Cir. 1982). Nevertheless, “28
3 U.S.C. § 1915(d) confers on a district court the discretion to designate counsel to
4 represent an indigent civil litigant.” Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th
5 Cir. 1986). That discretion, however, is limited: “counsel may be designated under
6 section 1915(d) only in ‘exceptional circumstances.’” Id. (citing Weller v. Dickson, 314
7 F.2d 598, 600 (9th Cir. 1963)). To that end, “[a] finding of exceptional circumstances
8 requires an evaluation of both ‘the likelihood of success on the merits [and] the ability of
9 the petitioner to articulate his claims pro se in light of the complexity of the legal issues
10 involved.’” Wilborn, 789 F.2d at 1331 (quoting Weygandt v. Look, 718 F.2d 952, 954
11 (9th Cir. 1983)).

12 Here, despite Plaintiff’s contention to the contrary (Dkt. #198), Plaintiff has not
13 demonstrated an inability to articulate his claims in light of the complexity of the legal
14 issues. Plaintiff’s numerous motions and citations to case law in this case clearly
15 demonstrate that Plaintiff is capable of competently presenting his arguments in light of
16 the two remaining issues for trial: (1) whether Klein was deliberately indifferent to
17 Plaintiff’s suffering; and (2) whether Defendant Massey was aware of a substantial risk of
18 harm to Plaintiff posed by the conditions in the shower and whether she disregarded that
19 risk. (Dkt. #181, pp. 24-25). Thus, even if Plaintiff was able to show a likelihood of
20 success on the merits, because Plaintiff is able to articulate his claims pro se, the Court
21 cannot find that exceptional circumstances exist to permit the Court to designate counsel
22 under 28 U.S.C. § 1915(d).¹ The Court must deny Plaintiff’s motion for appointment of
23 counsel.

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27 ¹In any event, the Court referred Plaintiff’s case to the Court’s Pro Bono Referral
28 Program for possible placement of the case with an attorney. However, the matter was
unable to be placed.

1 **II. MOTION FOR RECONSIDERATION**

2 Plaintiff moves the Court to reconsider its denial of Plaintiff’s oral motion to
3 reopen discovery at the June 2, 2009 Final Pretrial Conference. (Dkt. #193). Plaintiff
4 requests that the Court permit Plaintiff to determine “if the interrogatories obtained in this
5 case – specifically how judgment for monetary damages will be satisfied – are still valid.”
6 (Id., p.1). Specifically, Plaintiff is concerned that the State of Arizona – as a result of the
7 fact that Defendant Klein obtained private counsel and is no longer being represented by
8 the Office of the Attorney General – might “elect by statute to withdraw from paying
9 damages for Defendant Klein,” and that Defendant Klein might “pull a Bernard Madoff,
10 and liquidate all his assets.” (Id., pp. 5-6).

11 First, “[a] motion for reconsideration should not to be used to ask a court to rethink
12 what the court ha[s] already thought through – rightly or wrongly.” Defenders of
13 Wildlife v. Browner, 909 F.Supp. 1342, 1351 (D. Ariz. 1995) (internal quotation marks
14 and citation omitted). Plaintiff’s motion asks the Court to rethink what it has already
15 thought through, i.e., whether the Court should reopen discovery to allow Plaintiff to
16 conduct discovery into whether the State of Arizona will continue to be liable for any
17 judgment awarded against Defendant Klein. (Dkt. #188). Second, Defendant Klein’s
18 counsel already represented to the Court at the Final Pretrial Conference, and again in
19 response to Plaintiff’s Motion for Reconsideration, that the State of Arizona will continue
20 to be financially responsible for any judgment awarded against Defendant Klein. (Dkt.
21 #204). Thus, Plaintiff’s question has already been answered, and his motion for
22 reconsideration is moot.

23 **Accordingly,**

24 **IT IS HEREBY ORDERED** denying Plaintiff’s motion for appointment counsel.
25 (Dkt. #190).

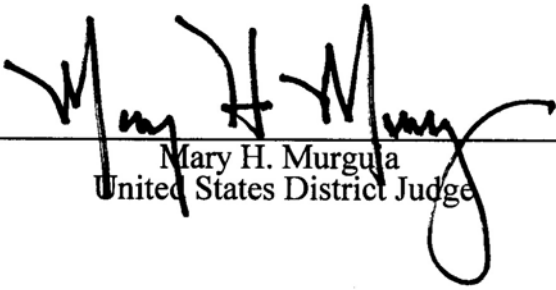
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IT IS FURTHER ORDERED denying Plaintiff's motion for reconsideration as moot. (Dkt. #193).

DATED this 5th day of August, 2009.



Mary H. Murgula
United States District Judge