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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Geary W. Walton,

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No. CV-10-2206-PHX-FJM (LOA)

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Plaintiff,

)

ORDER

11

vs.

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Charles L. Ryan,

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Defendant.

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This matter arises on Plaintiff’s Motion for Appointment of Counsel. (Doc. 28)

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For the reasons set forth below, the Court will deny the motion to appoint counsel.

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APPOINTMENT OF COUNSEL

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In a civil case, there is no constitutional right to appointment of counsel.

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Johnson v. U.S. Department of Treasury, 939 F.2d 820, 824 (9th Cir. 1991). However,

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“[t]he court may request an attorney to represent any person unable to afford counsel.” 28

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U.S.C. § 1915(d). The statute gives the trial court broad discretion to determine whether

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appointment of counsel is warranted, but the Ninth Circuit has limited the exercise of that

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power to exceptional circumstances. *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980);

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United States ex rel. Gardner v. Madden, 352 F.2d 792 (9th Cir. 1965). Other circuits agree.

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See e.g., Lovado v. Keohane, 992 F.2d 601, 605-05 (6th Cir. 1993); *Fowler v. Jones*, 899

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F.2d 1088, 1096 (11th Cir. 1990); *Cookish v. Cunningham*, 787 F.2d 1, 2 (1st Cir. 1986);

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Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975).

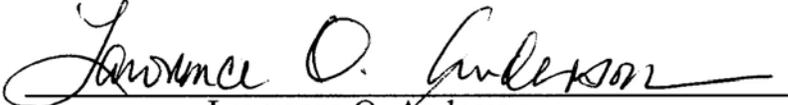
1 In determining whether to appoint counsel, the district court should consider
2 the likelihood of success on the claim's merits and the ability of plaintiff to articulate his
3 claims in view of their complexity. *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir.
4 1990). Other factors include: (1) Plaintiff's education, literacy, prior work experience, and
5 prior litigation experience; (2) whether Plaintiff is a prisoner and whether any restraints are
6 placed on the prisoner to present her case; (3) the complexity of the underlying legal issues;
7 (4) whether the case entails a need for factual investigation; (5) Plaintiff's ability to carry out
8 such investigation; (6) the likelihood that a claim will involve substantial discovery and
9 compliance with complex discovery rules; and (7) whether credibility determinations are
10 involved that may require the experience of one trained in the presentation of evidence and
11 cross-examination. *Tabron v. Grace*, 6 F.3d 147 (3rd Cir. 1993). However, the court must
12 temper these considerations with the practical restraints imposed by the small number of
13 attorneys willing to represent indigent parties without compensation and the court's inability
14 to require counsel to undertake such representation. *Id.* at 157.

15 After considering all the relevant factors - including that Plaintiff's ability to
16 express himself in writing, the uncomplicated nature of the claims, and the fact that it is too
17 early in the litigation for the Court to determine the likelihood of success on the merits - the
18 Court concludes that exceptional circumstances are not present and appointment of counsel
19 is not warranted.

20 Accordingly,

21 **IT IS ORDERED** that Plaintiff's Motion for Appointment of Counsel, doc. 28,
22 is **DENIED** without prejudice.

23 DATED this 15th day of August, 2011.

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26 
27 Lawrence O. Anderson
28 United States Magistrate Judge