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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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12 George Albert Brogdon, Jr. )

13 ) Plaintiff, )

No. CV-11-01389-PHX-RCB(MEA)

14 ) vs. )

O R D E R

15 ) City of Phoenix Police )

16 ) Department; Officer Mylen )

17 ) Lubker; Officer Eric )

18 ) Boardman, )

19 ) )

20 ) Defendants. )

21 ) )

22 Pending before the court is plaintiff *pro se* George

23 Albert Brogdon, Jr.'s third Motion for Appointment of

24 Counsel pursuant to 28 U.S.C. § 1915(e)(1) (Doc. 60).

25 Despite three attempts, still, plaintiff has not made the

26 predicate showing of "exceptional circumstances" which the

27 Ninth Circuit requires to warrant appointment of counsel

28 pursuant to 28 U.S.C. § 1915(e)(1). See Agyeman v. Corr.

Corp. of Am., 390 F.3d 1101, 1103 (9<sup>th</sup> Cir. 2004) (quoting

Franklin v. Murphy, 745 F.2d 1221, 1236 (9<sup>th</sup> Cir. 1984))

(District courts have discretion pursuant to section

1 1915(e)(1) to appoint counsel for indigent civil litigants  
2 "'only in exceptional circumstances.'" Accordingly, as  
3 discussed below, the court denies plaintiff's motion for  
4 appointment of counsel.

### 5 Background

6 Plaintiff's current motion, although not identical, is  
7 substantially similar to his prior two motions, which were  
8 denied. As before, the plaintiff declares that: (1) he is  
9 "unable to afford counsel[;]" (2) he has been "granted leave  
10 to proceed in forma pauperis[;]" and (3) his "imprisonment  
11 will greatly limit his ability to litigate." Compare Mot.  
12 (Doc. 60) at 1, ¶¶ 1-2 with Mot. (Doc. 37) at 1, ¶¶ 1-2 and  
13 Mot. (Doc. 23) at 1, ¶¶ 1-2. Also as before, plaintiff  
14 states that "counsel would better enable [him] to present  
15 evidence and cross-examine witnesses[]" at trial. Compare  
16 id. at 1, ¶ 3 with Mot. (Doc. 37) at 1, ¶ 3 and Mot. (Doc.  
17 23) at 2, ¶ 3. In contrast to his earlier motions, however,  
18 this time, rather than simply anticipating trial, as the  
19 plaintiff indicates, the case is trial ready. Indeed, the  
20 parties have been ordered, among other things, to lodge a  
21 Proposed Joint Pretrial Order shortly. See Ord. (Doc. 59).

22 Continuing to oppose plaintiff's motion, the defendants  
23 argue, as they did previously, that he has not shown the  
24 requisite "exceptional circumstances" for appointment of  
25 counsel pursuant to 28 U.S.C. § 1915(e)(1). The court  
26 agrees.

### 27 Discussion

28 In a 42 U.S.C. § 1983 action such as this, "[t]here is no

1 constitutional right to appointed counsel[.]” Rand v.  
2 Rowland, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997) (citation  
3 omitted), partially overruled en banc on other grounds, 154  
4 F.3d 952, 954 n. 1 (9<sup>th</sup> Cir. 1998)); see also Hedges v.  
5 Resolution Trust Corp., 32 F.3d 1360, 1353 (9<sup>th</sup> Cir. 1994)  
6 (“[T]here is no absolute right to counsel in civil  
7 proceedings.”) Therefore, federal courts do not have the  
8 authority “to make coercive appointments of counsel.”  
9 Mallard v. United States District Court, 490 U.S. 296, 310,  
10 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989). By the same token  
11 though, pursuant to 28 U.S.C. § 1915(e)(1), a “court may  
12 request an attorney to represent any person unable to afford  
13 counsel.” Such a request is predicated upon a showing of  
14 exceptional circumstances. See Agyeman, 390 F.3d at 1103.

15 A finding of exceptional circumstances “requires at least  
16 an evaluation of the likelihood of the plaintiff’s success on  
17 the merits and an evaluation of the plaintiff’s ability to  
18 articulate his claims ‘in light of the complexity of the  
19 legal issues involved.’” Id. (quoting Wilborn v. Escalderon,  
20 789 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986)). “Neither of these  
21 factors is dispositive and both must be viewed together  
22 before reaching a decision.’” Terrell v. Brewer, 935 F.2d  
23 1015, 1017 (9<sup>th</sup> Cir. 1991) (quoting Wilborn, 789 F.2d at  
24 1331). In the end, the burden remains upon the plaintiff to  
25 establish exceptional circumstances. See Thornton v.  
26 Schwarzenegger, 2010 WL 3910446, at \*5 (S.D.Cal.2010)  
27 (denying section 1915(e)(1) motion for appointment of counsel  
28 where plaintiff “failed to demonstrate either a likelihood of

1 success on the merits or an inability to represent himself  
2 (beyond the ordinary burdens encountered by prisoners  
3 representing themselves pro se) [ ]"). Plaintiff Brogdon has  
4 not met this burden.

5 Plaintiff does not offer (nor has he previously) any  
6 argument whatsoever as to his likelihood of success on the  
7 merits. Likewise, plaintiff Brogdon has not shown "that  
8 because of the complexity of the claims he [has been] unable  
9 to articulate his positions." See Rand, 113 F.3d at 1525.  
10 Indeed, the record demonstrates just the opposite. Remaining  
11 for trial is a straightforward "Fourth Amendment claim . . .  
12 alleging that [defendants] Boardman and Lubker lacked  
13 reasonable suspicion to stop and detain Plaintiff." Ord.  
14 (Doc. 57) at 13:1-2, ¶ 4. This case is not factually or  
15 legally complex. Nor does it involve a large number of  
16 parties or issues.

17 What is more, as the record reflects, the plaintiff has  
18 shown an ability to more than adequately articulate his  
19 position. Plaintiff "has been able to articulate his claims  
20 . . . , as the Court found that [his] complaint contained  
21 allegations sufficient to survive the [statutorily mandated]  
22 sua sponte screening" process. See Miller v. LaMontagne,  
23 2012 WL 1666735, at \*2 (S.D.Cal.2012). Additionally, during  
24 the two year pendency of this lawsuit, plaintiff has filed  
25 numerous motions with some success. Indeed, he partially  
26 withstood defendants' motion to dismiss, as well as their  
27 summary judgment motion. Thus, plaintiff has shown that he  
28 is capable of navigating the legal process.

1 Even if, as plaintiff claims, his confinement "will  
2 greatly limit his ability to litigate[,]" Mot. (Doc. 60) at  
3 1, that asserted limitation does not establish complexity of  
4 the issues or otherwise show exceptional circumstances.  
5 Finally, although, as plaintiff states, an attorney "would  
6 better enable plaintiff to present evidence and cross-examine  
7 witnesses[,]" id., that is not a sufficient basis for finding  
8 exceptional circumstances. See Thornton, 2010 WL 3910446, at  
9 \*5 (citing Rand, 113 F.3d at 1525) ("factual disputes and  
10 anticipated cross-examination of witnesses do not indicate a  
11 presence of complex legal issues warranting a finding of  
12 exceptional circumstances").

13 For all of these reasons, on this record the court finds  
14 that the "exceptional circumstances" necessary for  
15 appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) are  
16 absent. Accordingly, the court hereby **DENIES** plaintiff's  
17 Motion for Appointment of Counsel (Doc. 60).

18 DATED this 19th day of June, 2011.

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22 Robert C. Broomfield  
23 Senior United States District Judge  
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28 Copies to counsel of record and plaintiff *pro se*