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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Joseph Andrew DeKenipp,

10 Plaintiff,

11 v.

12 Paul R Babeu, et al.,

13 Defendants.  
14

No. CV-14-01971-PHX-DJH (ESW)

**ORDER**

15  
16 Plaintiff Joseph Andrew DeKenipp is a pro se prisoner confined in the Arizona  
17 Department of Corrections, Manzanita Unit, in Tucson, Arizona. He has filed a Second  
18 Amended Complaint (Doc. 23), alleging a violation of his civil rights pursuant to 42  
19 U.S.C. § 1983. On August 3, 2016, the Court screened the Second Amended Complaint  
20 pursuant to 28 U.S.C. § 1915A(a) and ordered Defendants Johnson, Martinez, and Neal  
21 to answer Count One (Doc. 26 at 9). Counts Two, Three, and all other named Defendants  
22 were dismissed without prejudice (*Id.*). The Court sent service packets to the Plaintiff  
23 with instructions to complete and return the service packets to the Clerk of Court within  
24 twenty-one days for service of process by the United States Marshals Service (“USMS”).  
25 The Court set a time limit of sixty (60) days from the date of the filing of its Order (Doc.  
26 26) for the Plaintiff to complete service of process (*Id.*).

27 Prior to the Court having screened the Plaintiff’s Second Amended Complaint,  
28 Plaintiff filed a “Request for Service of Summons, Rules 4(b), 4(m), Fed. Rules Civil

1 Procedure” (Doc. 25). In his Request, Plaintiff seeks an extension of time to serve the  
2 Defendants. The Court finds that the Request is premature as it was sought prior to the  
3 screening of Plaintiff’s Second Amended Complaint. The Court’s Order (Doc. 26)  
4 renders Plaintiff’s Request moot. In fact, the Clerk of Court forwarded Plaintiff’s  
5 completed service packets to the USMS on August 26, 2016. Time for service of process  
6 has not run, nor has USMS attempted service yet. The Request (Doc. 25) shall be denied  
7 without prejudice.

8 Also pending before the Court is “Plaintiff’s Pro Per Motion For Leave of Court  
9 For Appointment of Advisory Counsel Pursuant to 28 USC--§ 1915(e)(1); 42 USC§  
10 1988; 18 USC § 300A, In a Complex Case Under 42 USC § 1983, by a State Prisoner.”  
11 (Doc. 28). By Order (Doc. 22) filed on March 24, 2016, the Court denied Plaintiff’s  
12 previous Motion for Appointment of Counsel (Docs. 19-21). Plaintiff now requests the  
13 appointment of either counsel or advisory counsel due to the limitations Plaintiff faces  
14 while incarcerated, the complexity of his case, and his inability to afford an attorney.

15 As previously explained to the Plaintiff, there is no constitutional right to the  
16 appointment of counsel in a civil case. *See Johnson v. U.S. Dep’t of Treasury*, 939 F.2d  
17 820, 824 (9th Cir. 1991); *Ivey v. Bd of Regents of the Univ. of Alaska*, 673 F.2d 266, 269  
18 (9th Cir. 1982). “However, a court may under ‘exceptional circumstances’ appoint  
19 counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer v. Valdez*,  
20 560 F.3d 965, 970 (9th Cir. 2009) (quoting *Agyeman v. Coors. Corp. of Am.*, 390 F.3d  
21 1101, 1103 (9th Cir. 2004)). “When determining whether ‘exceptional circumstances’  
22 exist, a court must consider ‘the likelihood of success on the merits as well as the ability  
23 of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal  
24 issues involved.’” *Palmer*, 560 F.3d at 970 (quoting *Weygandt v. Look*, 718 F.2d 952,  
25 954 (9th Cir. 1983)) (italics in original); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017  
26 (9th Cir. 1991). “Neither of these considerations is dispositive and instead must be  
27 viewed together.” *Palmer*, 560 F.3d at 970 (citing *Wilborn v. Escalderon*, 789 F.2d  
28 1328, 1331 (9th Cir. 1986)).

