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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Richard LeGrand Gause,

10 Plaintiff,

11 v.

12 Unknown Indy, et al.,

13 Defendants.
14

No. CV-15-02514-JJT-ESW

ORDER

15 This is a civil rights action filed by pro se prisoner Richard LeGrand Gause
16 (“Plaintiff”) pursuant to 42 U.S.C. § 1983. The Court has reviewed the documents
17 recently filed by Plaintiff (Docs. 21- 24) and issues the rulings set forth below.

18 **I. DISCUSSION**

19 **A. Plaintiff’s “Request to be appointed counsel” (Doc. 21)**

20 In his May 27, 2016 filing (Doc. 21), Plaintiff requests that Court appoint him
21 counsel. In support of his request, Plaintiff states in part that (i) he is “being denied
22 access to the E-File system and access to have copies made”; (ii) the Arizona Department
23 of Corrections (“ADC”) allegedly lied to the Marshals Service that Defendant Dr. Indy¹
24 is no longer employed by ADC; (iii) he is unsure on how to proceed as to Defendant East,
25 who may be deceased; and (iv) correctional officers “are making it near impossible to
26 adequately meet deadlines and properly do this suit.”

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28 ¹ The doctor has been served and has answered. (Docs. 11, 17). The correct
spelling of the doctor’s surname is “Ende” (Doc. 11 at 2).

1 There is no constitutional right to the appointment of counsel in a civil case. *See*
2 *Johnson v. U.S. Dep't of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991); *Ivey v. Bd of*
3 *Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). “However, a court
4 may under ‘exceptional circumstances’ appoint counsel for indigent civil litigants
5 pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.
6 2009) (quoting *Agyeman v. Coors. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)).
7 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
8 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his
9 claims pro se in light of the complexity of the legal issues involved.’” *Palmer*, 560 F.3d
10 at 970 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); *see also Terrell v.*
11 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). “Neither of these considerations is
12 dispositive and instead must be viewed together.” *Palmer*, 560 F.3d at 970 (citing
13 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

14 Plaintiff has not demonstrated a likelihood of success on the merits, nor has
15 he shown that he is experiencing difficulty in litigating this case because of the
16 complexity of the issues involved. Plaintiff’s continued filings with the Court
17 indicate that Plaintiff is capable of navigating this proceeding and presenting
18 arguments to the Court. *See Wilborn*, 789 F.2d at 1331 (“If all that was required to
19 establish successfully the complexity of the relevant issues was a demonstration of the
20 need for development of further facts, practically all cases would involve complex legal
21 issues.”). Plaintiff remains in a position no different than many *pro se* prisoner litigants.
22 In sum, Plaintiff has not shown that exceptional circumstances are present that would
23 require the appointment of counsel in this case. Having failed to show that any
24 exceptional circumstances are present, Plaintiff’s request for appointment of counsel will
25 be denied.

26 **B. Plaintiff’s “Extension on time frames of Discovery” (Doc. 22)**

27 In the above filing, Plaintiff requests an “indefinite time extension to produce
28 Discovery Request #1 until copies can be made.” Plaintiff’s filing, dated May 24, 2016,

1 states that Plaintiff is in detention and is “being denied access to make copies, also access
2 to the E-File system.” The Court notes that on May 26, 2016, Plaintiff filed a document
3 captioned “Discovery Response” (Doc. 20). The document states “[a]ttached are
4 requested Documents in #1 Discovery Request.” Plaintiff’s “Extension on time frames of
5 Discovery” (Doc. 22) will be denied as moot.

6 **C. Plaintiff’s May 27, 2016 Filing at Doc. 23, Docketed as “Notice re:
7 Discovery Request”**

8 On May 27, 2016, the Clerk of Court docketed a document signed by Plaintiff that
9 is addressed to Mark Brnovich with the subject line “Discovery Request.” The
10 introductory paragraph states “Hi, I’m writing with my first Discovery Request.”

11 Federal Rules of Civil Procedure Rule 5(d) states that “the following discovery
12 requests and responses must not be filed until they are used in the proceeding or the court
13 orders filing: depositions, interrogatories, requests for documents or tangible things or to
14 permit entry onto land, and requests for admission.” LRCiv 5.2 provides that “[a]
15 ‘Notice of Service’ of the disclosures and discovery requests and responses listed in Rule
16 5(d) of the Federal Rules of Civil Procedure must be filed within a reasonable time after
17 service of such papers.”

18 Plaintiff has not “used” the discovery requests contained in his filing (Doc. 23) in
19 the proceeding (e.g. by relying upon responses in support of a motion, supporting a
20 motion to compel, etc.). Therefore, Plaintiff’s filing of the actual discovery requests
21 instead of a “Notice of Service” is in violation of LRCiv 5.2 and Rule 5(d) of the Federal
22 Rules of Civil Procedure. Accordingly, Plaintiff’s filing docketed as “Notice re:
23 Discovery Request” (Doc. 22) will be stricken.

24 **D. Plaintiff’s Filing at Doc. 24, Docketed as “Motion for Copy of Discovery
25 Response”**

26 On May 31, 2016, Plaintiff filed a document captioned as “Need Discovery
27 Response Copy,” which the Clerk of Court docketed as “Motion for Copy of Discovery
28 Response.” Plaintiff provides a detailed recount of an alleged error that resulted in
Plaintiff not receiving a complete copy of Document 20. The Court will direct the Clerk

1 of Court to mail Plaintiff a copy of Document 20.

2 **E. Service on Defendants East and Dentist Doe**

3 The Court ordered service of the First Amended Complaint (Doc. 8) on
4 Defendants Ende, FHA Doe, Dentist Doe, East, and Utterbeck. (Doc. 9 at 15). All
5 defendants have been served and have answered except for Defendant East and Dentist
6 Doe. (Docs. 11-17). The time for the completion of service on Defendants East and Doe
7 has expired. (Doc. 9 at 16). Accordingly, by **June 20, 2016**, Plaintiff shall show cause
8 why Defendants East and Dentist Doe should not be dismissed without prejudice from
9 this action for failure to serve pursuant to the Rule 4(m) of the Federal Rules of Civil
10 Procedure and Rule 16.2(b)(2)(B)(ii) of the Local Rules of Civil Procedure.

11 **II. CONCLUSION**

12 Based on the foregoing,

13 **IT IS ORDERED** denying Plaintiff's "Request to be Appointed Counsel" (Doc.
14 21).

15 **IT IS FURTHER ORDERED** denying as moot Plaintiff's "Extension on time
16 frames of Discovery" (Doc. 22).

17 **IT IS FURTHER ORDERED** directing the Clerk of Court to strike Plaintiff's
18 May 27, 2016 filing at Doc. 23, docketed as "Notice re: Discovery Request."

19 **IT IS FURTHER ORDERED** granting to the extent set forth herein Plaintiff's
20 filing at Doc. 24, docketed as "Motion for Copy of Discovery Response." The Clerk of
21 Court is directed to mail Plaintiff a copy of Document 20.

22 **IT IS FURTHER ORDERED** that by **June 20, 2016**, Plaintiff shall show cause
23 why Defendants East and Dentist Doe should not be dismissed without prejudice from
24 this action for failure to serve pursuant to the Rule 4(m) of the Federal Rules of Civil
25 Procedure and Rule 16.2(b)(2)(B)(ii) of the Local Rules of Civil Procedure.

26 Dated this 6th day of June, 2016.

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Eileen S. Willett
United States Magistrate Judge