

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

ROBERT HACKWORTH,)	1: 06-CV-0772 AWI DLB
)	
Plaintiff,)	ORDER DENYING MOTION FOR
)	COUNSEL
v.)	
)	
H. GERMAN, et al.,)	(Document #93)
)	
Defendants.)	

Plaintiff is a state prisoner proceeding with a civil rights action against defendants. The case now proceeds against Defendant Weiglein and Defendant German. Plaintiff alleges Defendants violated Plaintiff's Eighth Amendment rights by using excessive force on Plaintiff.

On April 15, 2010, Plaintiff filed a motion for counsel.

On April 26, 2010, the court held a telephonic trial confirmation hearing. At the hearing, the court discussed Plaintiff's motion for counsel. The court stated it would deny Plaintiff's motion.

There is no constitutional right to counsel in a civil case. Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981). Title 28 U.S.C. § 1915 confers on a district court only the power to "request" that counsel represent a litigant who is proceeding in forma pauperis.

1 U.S.C. § 1915(e)(1). This does not give the courts the power to make "coercive appointments of
2 counsel." Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989). The court may ask
3 counsel to represent an indigent litigant under Section 1915 only in "exceptional circumstances,"
4 the determination of which requires an evaluation of both (1) the likelihood of success on the
5 merits and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity
6 of the legal issues involved. Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir.1997) *withdrawn in*
7 *part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir.1998) (en banc); Wilborn v.
8 Escalderon, 789 F.2d 1328, 1331 (9th Cir.1986).

9 Plaintiff has failed to make a showing that statutory grounds exist that require the court to
10 appoint counsel. Plaintiff has been able to present his claims adequately, and the issues at this
11 stage of the case are issues of fact. The issue to be presented to the jury is what actions Plaintiff
12 and Defendants took surrounding Defendants' pepper spraying of Plaintiff. This disputed issue
13 of fact is ready to be tried by a jury, and any further proceedings in this action do not involve
14 issues of law that are novel or complex. A review of the docket also reveals that Plaintiff's
15 filings are comprehensive and focused. Plaintiff has filed numerous documents throughout this
16 action, and these motions are articulate and organized.

17 In addition, at this time, the court has no panel of attorneys willing to represent prisoners
18 in prisoner civil rights cases on a pro bono basis. The court has made efforts to try to find
19 counsel willing to try such cases, and the court has been unable to obtain a sufficient panel to
20 arrange for counsel in every case. To the contrary, the vast majority of cases proceed without
21 counsel.

22 Accordingly, the court ORDERS that Plaintiff's motion for counsel is DENIED.

23
24 IT IS SO ORDERED.

25 **Dated:** April 27, 2010

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE