

1 2 3 4 5 6 7

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

11 KEVIN G. GARNER, CASE NO. 1:07-cv-01583 LJO DLB PC
12 Plaintiff, _____ ORDER DENYING MOTION FOR STAY
13 AND MOTION FOR APPOINTMENT OF
14 COUNSEL
15 vs. ORDER GRANTING EXTENSION OF TIME
16 AVENAL STATE PRISON, et al., TO FILE OBJECTIONS TO FINDINGS AND
Defendants. RECOMMENDATIONS
(Doc. 15)

18 Plaintiff Kevin G. Garner (“plaintiff”) is a state prisoner proceeding pro se in a civil rights action
19 pursuant to 42 U.S.C. § 1983. On February 27, 2009, the undersigned issued a Findings and
20 Recommendations recommending dismissal of this action, with prejudice, for failure to state a claim
21 upon which relief may be granted. On April 6, 2009, Plaintiff filed an Objection. (Doc. 15).

22 Although titled as Plaintiff's objections, Plaintiff's filing is not a proper objection but rather a
23 motion for the appointment of counsel and a motion for a one year stay of this action.

24 | Appointment of Counsel

25 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
26 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent
27 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern
28 District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional

1 circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1).
2 Rand, 113 F.3d at 1525.

3 Without a reasonable method of securing and compensating counsel, the court will seek
4 volunteer counsel only in the most serious and exceptional cases. In determining whether “exceptional
5 circumstances exist, the district court must evaluate both the likelihood of success of the merits [and]
6 the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues
7 involved.” Id. (internal quotation marks and citations omitted).

8 In the present case, the court does not find the required exceptional circumstances. Even if it is
9 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if
10 proved, would entitle him to relief, his case is not exceptional. This court is faced with similar cases
11 almost daily. Further, at this early stage in the proceedings, the court cannot make a determination that
12 plaintiff is likely to succeed on the merits, and based on a review of the record in this case, the court does
13 not find that plaintiff cannot adequately articulate his claims. Id.

14 For the foregoing reasons, plaintiff’s motion for the appointment of counsel is HEREBY
15 DENIED, without prejudice

16 **One Year Stay of Proceedings**

17 Plaintiff has also requested a one year stay of this action to allow him time to either obtain
18 counsel or conduct legal research. Plaintiff has not demonstrated sufficient reason to stay this action
19 and his motion is DENIED.

20 The court will provide plaintiff with an additional thirty days to file objections to the Findings
21 and Recommendations filed on February 27, 2009. Plaintiff is warned that the objections must consist
22 only of plaintiff’s objections to the Findings and Recommendations. Plaintiff may not combine any
23 other motion with the objections. If plaintiff wishes to file a motion, plaintiff must do so in a separate
24 filing, although the filings can be submitted to the court at the same time.

25 ///

26 ///

27 ///

28 ///

1 **Conclusion and Order**

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. Plaintiff's request for the appointment of counsel is denied without prejudice;
- 4 2. Plaintiff's request for a one year stay of this action is denied; and
- 5 3. Plaintiff's objections to the Findings and Recommendations filed on February 27, 2009,
- 6 if any, must be filed within thirty (30) days from the date of service of this order; and
- 7 4. If plaintiff's fails to file objections within thirty days, the Findings and
- 8 Recommendations filed on February 27, 2009 shall be submitted to the assigned District
- 9 Judge for consideration.

10 IT IS SO ORDERED.

11 **Dated: April 22, 2009**

12 /s/ Dennis L. Beck
13 UNITED STATES MAGISTRATE JUDGE

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28