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

JAWWAAD HASAN,

1:08-cv-00381-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL

vs.

(Doc. 85.)

C/O JOHNSON,

Defendant.

_____ /

I. BACKGROUND

Jawwaad Hasan (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on March 17, 2008. (Doc. 1.) The case now proceeds on the original Complaint against defendant Correctional Officer Johnson, on Plaintiff’s claims for excessive force under the Eighth Amendment. *Id.* On November 16, 2012, Plaintiff filed a motion seeking the appointment of counsel. (Doc. 85.)

II. MOTION FOR APPOINTMENT OF COUNSEL

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

1 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of
2 securing and compensating counsel, the court will seek volunteer counsel only in the most
3 serious and exceptional cases. In determining whether “exceptional circumstances exist, the
4 district court must evaluate both the likelihood of success of the merits [and] the ability of the
5 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
6 Id. (internal quotation marks and citations omitted).

7 Plaintiff filed two prior motions for appointment of counsel in this action, on April 9,
8 2008 and October 21, 2011. (Docs. 9, 32.) Plaintiff refers back to the Court’s order denying
9 his motion of October 21, 2011, in which the court found that the “exceptional circumstances”
10 required by the Ninth Circuit in Rand, 113 F.3d 1525, were not present in Plaintiff’s case.
11 Plaintiff argues that the Court should apply the legal standards used by the Second, Seventh,
12 and Eighth Circuits, which require the court to give serious consideration to the appointment of
13 counsel if the plaintiff’s claim has merit. Plaintiff also argues that he is eligible for
14 appointment of counsel because he has moderate deficits in visual memory, verbal language
15 skills, and visual motor interrogation affecting reading and spelling, and a writing disability.
16 He also claims that the conditions of his incarceration make it difficult to litigate his claims.
17 Plaintiff requests the Court to also consider the complexity of his particular legal issues and his
18 difficulty understanding legal procedures.

19 **III. DISCUSSION**

20 With respect to Plaintiff’s suggestion that the Court use different legal standards, it is
21 well established that this Court is bound by Ninth Circuit precedent.¹ Therefore, the Court may
22 not use the legal standards from the Second, Seventh, and Eighth Circuits cited by Plaintiff.

23 With respect to Plaintiff’s requests for the Court to consider the merits of his case and
24 his legal skills and abilities when deciding his motions for appointment of counsel, the Court
25 already considers these factors. The Ninth Circuit’s “exceptional circumstances” standard
26 requires the court to “evaluate both the likelihood of success of the merits [and] the ability of

27
28 ¹A federal district court is bound by the law of its own circuit. See Zuniga v. United Can Company, 812 F.2d 443 (9th Cir. 1987); also see United States v. AMC Entertainment, Inc., 549 F.3d 760 (9th Cir. 2007).

1 the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues
2 involved.” Rand, 113 F.3d at 1525.

3 In the present case, the court does not find the required exceptional circumstances. The
4 Court has reviewed Plaintiff’s allegations of excessive force and cannot determine at this
5 juncture that Plaintiff is likely to succeed on the merits. To succeed, Plaintiff must prove that
6 defendant Johnson applied force against him maliciously and sadistically to cause harm, and not
7 in a good-faith effort to restore discipline. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct. 995
8 (1992). Based on the record in this case, the Court does not find that Plaintiff cannot
9 adequately articulate his claims. Even if it is assumed that Plaintiff is not well versed in the law
10 and that he has made serious allegations which, if proved, would entitle him to relief, his case is
11 not exceptional. Moreover, Plaintiff’s claim – that he was subjected to excessive force – is not
12 complex, and the court is faced with similar cases almost daily. Therefore, Plaintiff’s motion
13 shall be denied, without prejudice to renewal of the motion at a later stage of the proceedings.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel, filed on
16 November 16, 2012, is HEREBY DENIED, without prejudice.

17 IT IS SO ORDERED.

18 **Dated: November 29, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE