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

Christopher J. Martinez,)	No. CV 08-0875-NVW
Plaintiff,)	ORDER
vs.)	
Correctional Officer A. Smith, et al.,)	
Defendants.)	

Before the Court is Plaintiff's Ex Parte Motion for Assignment of Counsel (doc. # 46). There is no constitutional right to appointment of counsel in a civil case. *See Ivey v. Board of Regents of University of Alaska*, 673 F.2d 266 (9th Cir. 1982); *Randall v. Wyrick*, 642 F.2d 304 (8th Cir. 1981). Moreover, the only statutory authority creating a basis for appointment is 28 U.S.C. §1915(e)(1), which confers on the court the discretion to appoint counsel to represent an indigent civil litigant. *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). The Court cannot compel a lawyer to represent an indigent plaintiff. *Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S. 296 (1989). An appointment of counsel may be requested under 28 U.S.C. §1915(e)(1) only in "exceptional circumstances." *Aldabe*, 616 at 1089; *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986).

1 This rule is derived from *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir.), *cert.*
2 *denied*, 375 U.S. 845, 84 S.Ct. 97, 11 L.Ed.2d 72 (1963) which held that "the privilege of
3 pleading in forma pauperis . . . in civil actions for damages should be allowed only in
4 exceptional circumstances." See *Wilborn*, 789 F.2d at 1328. *Weller* was extended,
5 without apparent comment, to "appointment of counsel" in *United States v. Madden*, 352
6 F.2d 792, 794 (9th Cir. 1965). *Madden* was then cited for the rule in *Alexander v.*
7 *Ramsey*, 539 F.2d 25, 26 (9th Cir. 1976); *United States v. McQuade*, 579 F.2d 1180, 1181
8 (9th Cir. 1978), *on appeal after remand*, 647 F.2d 938, 940 (9th Cir. 1981), *cert. denied*,
9 455 U.S. 958, 102 S.Ct. 1470, 71 L.Ed.2d 677 (1983); *Aldabe*, 616 at 1093; and *Franklin*
10 *v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984).

11 A finding of exceptional circumstances requires an evaluation of both "the
12 likelihood of success on the merits [and] the ability of the petitioner to articulate his
13 claims pro se in light of the complexity of the legal issues involved." *Weygandt v. Look*,
14 718 F.2d 952, 954 (9th Cir. 1983), *quoted in Richards v. Harper*, 864 F.2d 85 (9th Cir.
15 1988). Neither of these factors is dispositive and both must be viewed together before
16 reaching a decision on a request for counsel under section 1915(d). *Wilborn*, 789 F.2d at
17 1331.


18 Here, though plaintiff may or may not succeed on the merits, he has not yet
19 demonstrated a likelihood of success on the merits. In addition, plaintiff has failed to
20 show that any difficulty he is experiencing in attempting to litigate this case is derived
21 from the complexity of the issues involved. While most actions, such as the instant case,
22 require development of supporting facts during litigation and a pro se litigant will seldom
23 be in a position to investigate easily the facts to support the case, this does not equate with
24 showing the complexity of the relevant issues. *Wilborn*, 789 F.2d at 1331. The alleged
25 facts of this case appear to be straightforward.

26 This case is beyond the pleading stage and at the present time does not present
27 "exceptional circumstances" requiring the appointment of counsel.
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IT IS THEREFORE ORDERED that Plaintiff's Ex Parte Motion for Assignment of Counsel (doc. # 46) is denied.

Dated: June 10, 2010.



Neil V. Wake
United States District Judge