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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

|                        |   |                                  |
|------------------------|---|----------------------------------|
| SOPHAN POK,            | ) | Case No. 08cv1029 JAH (NLS)      |
|                        | ) |                                  |
| Plaintiff,             | ) | <b>ORDER DENYING PLAINTIFF’S</b> |
| v.                     | ) | <b>MOTION FOR APPOINTMENT OF</b> |
|                        | ) | <b>COUNSEL</b>                   |
| TONY HEDGPETH, Warden, | ) |                                  |
|                        | ) |                                  |
| Defendant.             | ) |                                  |
| _____                  | ) |                                  |

Plaintiff Sophan Pok, proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983, in which he alleges that defendant Tony Hedgpeth violated his constitutional rights. On October 13, 2009, Plaintiff filed a motion for appointment of counsel. In the motion Plaintiff states that he has a seventh grade education, has no legal skills, does not understand the motions and orders filed in this case, does not have any funds to employ an attorney to represent him, and cannot represent his interests in this complex case.

The Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is at the district court’s discretion, and requires the court to make a finding of “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991). Such a finding “requires an evaluation of both the ‘likelihood of success on the merits [and] the ability of the petitioner to articulate [his/her] claims *pro se* in light of the


1 complexity of the legal issues involved.’’” *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997);  
2 *Terrell*, 935 F.2d at 1017 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).  
3 Neither of these issues is dispositive, and both should be viewed together before reaching a decision. *Id.*

4 Based on the current record the Court has no reason to believe that Plaintiff is incapable of  
5 having a sufficient grasp of his case or the legal issues involved, or that Plaintiff might not be able to  
6 adequately articulate and communicate the basis of his claims. Plaintiff has failed to plead facts  
7 sufficient to show the “exceptional circumstances” required for appointment of counsel pursuant to 28  
8 U.S.C. § 1915(e)(1).

9 Accordingly, the Court **ORDERS** that Plaintiff’s motion for appointment of counsel is **DENIED**  
10 without prejudice.

11 **IT IS SO ORDERED.**

12 DATED: October 16, 2009

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14 Hon. Nita L. Stormes  
15 U.S. Magistrate Judge  
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