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

GERALD LEE MILLER, JR.,  
  
v.  
O. RUFINO, et al.,  
  
Plaintiff,  
  
Defendants.

Case No. 08cv1233 BTM(WMC)

**ORDER DENYING REQUEST FOR  
COURT APPOINTMENT OF  
EXPERT WITNESS**

Plaintiff has filed a "Request to Renew his Motion for Appointment of Marshall S. Lewis M.D. as an Expert Witness Pursuant to Federal Rule of Evidence 706."

The Court does not find it necessary to appoint an expert under Rule 706. This case involves deliberate indifference claims, not medical malpractice claims, and does not require the consideration of complex medical questions or the determination of reasonable standards of medical care. See Berg v. Prison Health Serv., 376 Fed. Appx. 723 (9th Cir. 2010) (holding that the district court did not abuse its discretion in denying state prisoner's motion for appointment of an expert under Rule 706 because the prisoner's deliberate indifference action "was not a medical malpractice claim and did not involve technical evidence or complex issues."); Ledford v. Sullivan, 105 F.3d 354, 359-60 (7th Cir. 1997) (explaining how the test for deliberate indifference differs from the test for medical malpractice and holding that the question of whether the prison officials displayed deliberate indifference toward the

1 prisoner plaintiff's serious medical need did not demand that the jury consider probing,  
2 complex questions concerning medical diagnosis and judgment.)

3 The focus of Rule 706 is whether the appointment of the expert will assist the trier of  
4 fact, not whether a party thinks the expert will be helpful to his or her case. Rule 706 is not  
5 a mechanism by which parties, who cannot otherwise afford to hire an expert witness, obtain  
6 the expert's services. See Noble v. Adams, 2009 WL 3028242 (E.D. Cal. Sept. 16, 2009)  
7 ("Plaintiff has not requested an expert because one is needed to assist the court. Rather  
8 Plaintiff is requesting an expert because he cannot afford to hire one. Such circumstances  
9 fall outside of reasons for an expert under Rule 706.")

10 Because the Court does not find it necessary to appoint an independent expert in this  
11 case, the Court **DENIES** Plaintiff's request. Plaintiff is free to obtain his own expert witness  
12 at his own cost.

13 **IT IS SO ORDERED.**

14 DATED: May 9, 2011



Honorable Barry Ted Moskowitz  
United States District Judge

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