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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JIMMY MCDONALD,

CASE NO. 1:09-cv-00730-SKO PC

Plaintiff,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL FOR
SETTLEMENT CONFERENCE

v.

J. A. YATES, et al.,

(Doc. 137)

Defendants.

Plaintiff Jimmy McDonald is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On June 3, 2013, Plaintiff filed a motion seeking the appointment of counsel.

Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1981). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn* 789 F.2d at 1331.

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1 In the present case and at this stage in the proceedings, the Court does not find the required
2 exceptional circumstances. *Palmer*, 560 F.3d at 970; *Wilborn* 789 F.2d at 1331. The Court
3 recognizes Plaintiff's concerns relating to the upcoming settlement conference set before United
4 States Magistrate Judge Stanley A. Boone, but a settlement conference is not a complex proceeding
5 in a case such as this and representation by counsel during the settlement conference is not necessary.
6 Judge Boone will assist the parties in attempting to reach a mutually agreeable settlement agreement.
7 Each side will have the opportunity, and likely multiple opportunities, to speak privately with Judge
8 Boone and those conversations are confidential. As a result, Plaintiff will have ample opportunity
9 to express his concerns privately to Judge Boone and also to benefit from Judge Boone's extensive
10 legal background.

11 Cases such as this can and do settle, but Plaintiff may be assured that settlement will occur
12 only if and when both sides are able reach an agreement. If they cannot agree, this case will proceed
13 to trial on September 17, 2013.

14 Based on the foregoing, the Court declines to appoint counsel in anticipation of the settlement
15 conference set for June 12, 2013, and Plaintiff's motion is HEREBY DENIED, without prejudice.

16
17 IT IS SO ORDERED.

18 **Dated: June 5, 2013**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE