

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

RONNIE LEE MOODY,

CASE NO. 1:09-cv-01502-AWI-SMS

Plaintiff,

V.

**ORDER DENYING PLAINTIFF'S MOTIONS
FOR APPOINTMENT OF COUNSEL AND
TRIAL ON PRIOR COMPLAINT**

OFFICER GLEN GRAVES, et al.,

Defendants.

(Doc. 26)

Plaintiff Ronnie Lee Moody is a state prisoner proceeding pro se and in forma pauperis in
civil rights action pursuant to 42 U.S.C. § 1983. On April 2, 2010, this Court denied
ff's Second Amended Complaint (Doc. 22) and two motions: Motion for Court Order (Doc.
d Motion for Extension of Time (Doc. 24) (Doc. 25). Plaintiff has now moved for
ntment of counsel and demanded a jury trial, apparently on his original complaint (Doc. 1).
matter has been referred to the magistrate judge pursuant to 28 U.S.C. § 636(b) and Local
72-302 and 72-304.

I. Appointment of Counsel

26 Plaintiff first requests appointment of counsel. The United States Supreme Court has
27 ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983
28 cases. *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296,

1 298 (1989). In certain exceptional circumstances, the Court may request the voluntary assistance
2 of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.
3 1997), *withdrawn in part, on other grounds*, 154 F.3d 952 (1998), *cert. denied*, 527 U.S. 1035
4 (1999). Without a reasonable method of securing and compensating counsel, this Court will seek
5 volunteer counsel only in the most serious and exceptional cases.

6 In the present case, the Court does not find the required exceptional circumstances. *See*
7 *Rand*, 113 F.3d at 1525. Even if it is assumed that Plaintiff is not well versed in the law and that
8 he has made serious allegations which, if proved, would entitle him to relief, his case is not
9 exceptional. This court is faced with similar cases almost daily. Therefore, Plaintiff's request for
10 the appointment of counsel will be denied.

11 **II. Demand for Trial**

12 Plaintiff demands "a jury trial on my case of claim that was filed last year and transferred
13 from San Francisco Northern District Court to Fresno Eastern District Court." Presumably,
14 Plaintiff refers to his original complaint (Doc. 1). Plaintiff's original complaint (Doc. 1), first
15 amended complaint (Doc. 19), and second amended complaint (Doc. 22) have been dismissed for
16 failure to state a cognizable claim (Docs. 13, 21, and 25). This Court cannot order that trial
17 proceed until Plaintiff has filed a complaint setting forth a cognizable claim, all defendant(s) have
18 been served, and necessary pretrial proceedings have been completed.¹

19 **III. Conclusion and Order**

20 For the reasons set forth above, this Court DENIES Plaintiff's motion for appointment of
21 counsel and an order for a jury trial.

22
23 IT IS SO ORDERED.

24 **Dated: April 12, 2010**

25 /s/ Sandra M. Snyder
26
27 UNITED STATES MAGISTRATE JUDGE

28
29 ¹ This Court's prior order (Doc. 25) permits Plaintiff to amend his complaint within thirty days or by May
30 5, 2010.