

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIE JAMISON,

Plaintiff,

v.

CAPELLO, et al.,

Defendants.

Case No. 1:10-cv-01633-MJS (PC)

**ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL**

(ECF No. 23)

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter proceeds on an excessive force claim against Defendant Capello and deliberate indifference and equal protection claims against Defendants Capello and Kuntz and is in the discovery phase.

Before the Court is Plaintiff's motion for appointment of counsel filed on April 30, 2014. Plaintiff asserts that counsel should be appointed because: he lacks funds to retain private counsel, the case is complex and requires investigation and discovery, he has limited education and knowledge of the law, and he suffers serious medical conditions and related physical limitations requiring nursing care.¹

¹ Plaintiff motion is a boilerplate request for appointment of habeas counsel.

1 **I. LEGAL STANDARD**

2 Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand*
3 *v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), partially overruled on other grounds, 154
4 F.3d 952, 954 n.1 (9th Cir. 1998), and the Court can not require an attorney to represent
5 him pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the*
6 *Southern District of Iowa*, 490 U.S. 296, 298 (1989). In certain exceptional circumstances
7 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1).
8 *Rand*, 113 F.3d at 1525. However, without a reasonable method of securing and
9 compensating counsel, the Court will seek volunteer counsel only in the most serious and
10 exceptional cases. In determining whether “exceptional circumstances exist, the district
11 court must evaluate both the likelihood of success of the merits [and] the ability of the
12 [plaintiff] to articulate his or her claims pro se in light of the complexity of the legal issues
13 involved.” *Id.* Neither of these factors is dispositive and both must be viewed together
14 before reaching a decision on request of counsel under section 1915(d). *Wilborn v.*
15 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th
16 Cir. 2009).

17 The burden of demonstrating exceptional circumstances is on the Plaintiff. See
18 *Palmer*, 560 F.3d at 970 (plaintiff “has not made the requisite showing of exceptional
19 circumstances for the appointment of counsel”); accord, *Alvarez v. Jacquez*, 415 F. App’x
20 830, 831 (9th Cir. 2011) (plaintiff “failed to show exceptional circumstances”); *Simmons v.*
21 *Hambly*, 14 F. App’x. 918, 919 (9th Cir. 2001) (same); *Davis v. Yarborough*, 459 F. App’x
22 601, 602 (9th Cir. 2011) (plaintiff “did not show the ‘exceptional circumstances’ required to
23 appoint counsel under 28 U.S.C. § 1915(e)(1).”).

24 **II. APPOINTMENT OF COUNSEL DENIED**

25 There are not exceptional circumstances supporting appointment of counsel. The
26 Court cannot make a determination at this stage of the litigation that Plaintiff is likely to
27 succeed on the merits. The claims alleged do not appear to be novel or unduly complex.
28 The facts alleged to date appear straightforward and unlikely to involve any extensive

1 investigation and discovery. Even if it is assumed that Plaintiff is not well versed in the law
2 and that he has made serious allegations which, if proved, would entitle him to relief, his
3 case is not exceptional. This Court is faced with similar cases almost daily.

4 The papers filed by Plaintiff in this case reflect an appreciation of the legal issues
5 and standards and an ability to express same adequately in writing. At present, the Court is
6 unable to find that, even considering Plaintiff's medical condition, he is unable adequately
7 to articulate his claims.

8 Finally, Plaintiff makes no showing that he has exhausted diligent efforts to secure
9 counsel.² His lack of funds alone does not demonstrate that efforts to secure counsel
10 necessarily would be futile.

11 **III. ORDER**

12 For the reasons stated, Plaintiff's April 30, 2014 motion for appointment of counsel is
13 DENIED, without prejudice.

14 IT IS SO ORDERED.

15
16 Dated: May 1, 2014

17 /s/ Michael J. Seng
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28

² See e.g., *Thornton v. Schwarzenegger*, 2011 WL 90320, *3-4 (S.D. Cal. January 11, 2011) (cases cited).