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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

BRUCE PATRICK HANEY,

Plaintiff,

vs.

R. AGUIRRE, et al.,

Defendants.

1:10-cv-01841-LJO-SMS PC

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(ECF No. 15)

ORDER GRANTING PLAINTIFF'S MOTION
TO PROCEED IN OPEN COURT

(ECF No. 12)

On November 24, 2010, Plaintiff a motion to proceed in open court requesting that this matter be reviewed and ruled on as soon as possible. On March 16, 2011, Plaintiff filed a motion seeking the appointment of counsel.

The Court construes Plaintiff's motion to proceed in open court as a motion to have his complaint screened. The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court screens complaints in the order in which they are filed and strives to avoid delays whenever possible. However, there are hundreds of prisoner civil rights cases presently pending before the Court, and delays are inevitable despite the Court's best efforts. Due to the heavy caseload, Plaintiff's complaint is still awaiting screening. The Court is aware of the pendency of this case and will screen Plaintiff's complaint in due course.

1 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
2 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to
3 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
4 for the Southern District of Iowa, 490 U.S. 296, 298, 109 S. Ct. 1814, 1816 (1989). However, in
5 certain exceptional circumstances the Court may request the voluntary assistance of counsel
6 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

7 Without a reasonable method of securing and compensating counsel, the Court will seek
8 volunteer counsel only in the most serious and exceptional cases. In determining whether
9 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
10 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
11 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

12 In the present case, the Court does not find the required exceptional circumstances. Even
13 if it is assumed that Plaintiff is not well versed in the law and that he has made serious
14 allegations which, if proved, would entitle him to relief, his case is not exceptional. This Court is
15 faced with similar cases almost daily. Further, at this early stage in the proceedings, the Court
16 cannot make a determination that Plaintiff is likely to succeed on the merits, and based on a
17 review of the record in this case, the Court does not find that Plaintiff cannot adequately
18 articulate his claims. Id.

19 For the foregoing reasons, it is HEREBY ORDERED that:

- 20 1. Plaintiff’s motion to proceed in open court is GRANTED and the complaint will
21 be screened in due time; and
- 22 2. Plaintiff’s motion for the appointment of counsel is HEREBY DENIED, without
23 prejudice.

24 IT IS SO ORDERED.

25 **Dated: March 25, 2011**

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