

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

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

RICHARD ABERCROMBIE,

1:11-cv-00048-GSA (PC)

Plaintiff,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

vs.

CORCORAN STATE PRISON, et al.,

(Document #14)

Defendants.

_____ /

On March 21, 2013, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

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

1 In the present case, the court does not find the required exceptional circumstances. At
2 this stage in the proceedings, the court cannot make a determination that plaintiff is likely to
3 succeed on the merits. This case proceeds against only one defendant, Richard Kaut, and the
4 Marshal has been unable to serve the defendant because he cannot be located. Moreover, based
5 on the record in this case, the court does not find that plaintiff cannot adequately articulate his
6 claims and respond to court orders. Further, the legal issue in this case – whether defendant
7 provided plaintiff with inadequate medical care – is not complex, and this court is faced with
8 similar cases almost daily. Therefore, plaintiff’s motion shall be denied without prejudice to
9 renewal of the motion at a later stage of the proceedings.

10 For the foregoing reasons, plaintiff’s motion for the appointment of counsel is HEREBY
11 DENIED, without prejudice.

12 IT IS SO ORDERED.

13 **Dated: May 16, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE