

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

TROY MITCHELL NAYLOR,
Plaintiff,
v.
CLIFF ALLENBY, et al.,
Defendant(s).

1:11-cv-01649-LJO-MJS (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(Document# 37)

On April 20, 2015, 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 (1989). 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. However, 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

1 citations omitted).

2 Plaintiff seeks the appointment of counsel because Defendant Duvall has advised
3 that criminal charges may be brought against Plaintiff because property containing child
4 pornography was seized from Plaintiff's room at Coalinga State Hospital. (ECF No. 35.)

5 The Court does not here find any of the required exceptional circumstances for
6 appointment of counsel.

7 Plaintiff's constitutional right to counsel in any potential criminal matter is separate
8 and apart from the Court's power to appoint counsel in this matter. Nothing before the
9 Court suggests that pursuit of the instant case will impact the potential criminal case
10 against Plaintiff.

11 Even if it is assumed that Plaintiff is not well versed in the law and that he has
12 made serious allegations which, if proved, would entitle him to relief, his case is not
13 exceptional. This Court is faced with similar cases almost daily. Further, at this early
14 stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to
15 succeed on the merits, and based on a review of the record in this case, the Court does
16 not find that Plaintiff cannot adequately articulate his claims. *Rand*, 113 F.3d at 1525.

17 For the foregoing reasons, plaintiff's motion for the appointment of counsel is
18 HEREBY DENIED, without prejudice.

19 IT IS SO ORDERED.

20
21 Dated: April 28, 2015

/s/ Michael J. Seng
22 UNITED STATES MAGISTRATE JUDGE