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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRISTAN D. ALLAN,
Plaintiff,
v.
DR. AKANNO,
Defendant.

1:12-cv-01103-AWI-BAM (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(ECF No. 31)

Plaintiff Tristan D. Allan (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s complaint against Defendant Akanno for deliberate indifference to medical needs in violation of the Eighth Amendment of the United States Constitution. A jury trial is scheduled for June 20, 2015.

On March 2, 2015, Plaintiff filed the instant 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.

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

6 In the present case, the court does not find the required exceptional circumstances. Even
7 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations
8 which, if proved, would entitle him to relief, his case is not exceptional. This court is faced with
9 similar cases almost daily from indigent prisoners litigating claims of deliberate indifference to
10 serious medical needs, many of which involve expert testimony. Although this matter is
11 proceeding to trial, the court cannot make a determination that Plaintiff is likely to succeed on the
12 merits. The merits of Plaintiff’s claims were not tested by way of a summary judgment motion.
13 Moreover, based on a review of the record in this case, the court does not find that Plaintiff
14 cannot adequately articulate his claims. Id.

15 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is HEREBY
16 DENIED without prejudice.

17 IT IS SO ORDERED.

18
19 Dated: March 4, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE