

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

DAVID MADDOX,

1:13-cv-00171-BAM (PC)

Plaintiff,

ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL

vs.

JAMES A. YATES, et al.,

(ECF No. 13)

Defendants.

_____ /

On September 13, 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 Plaintiff asserts that he requires counsel because he is a participant in mental health
2 services and he needed counsel to help him understand the forms and papers in an appeal to the
3 Ninth Circuit. The court does not find the required exceptional circumstances in this case. Even
4 if it is assumed that plaintiff is not well versed in the law and that he has made serious allegations
5 which, if proved, would entitle him to relief, his case is not exceptional. This court is faced with
6 similar cases almost daily. Plaintiff's receipt of mental health services and the appointment of
7 counsel in an appellate matter also do not establish exceptional circumstances in this action. At
8 this early stage in the proceedings, the court cannot make a determination that plaintiff is likely
9 to succeed on the merits, and based on a review of the record in this case, the court does not find
10 that plaintiff is cannot adequately articulate his claims. Id.

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

13 IT IS SO ORDERED.

14 **Dated: September 17, 2013**

/s/ **Barbara A. McAuliffe**
UNITED STATES MAGISTRATE JUDGE