

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

NORMAN GERALD DANIELS III,  
Plaintiff,  
v.  
R. TOLSON, et al.,  
Defendants.

---

Case No. 1:13-cv-00202-AWI-SKO (PC)  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL, WITHOUT  
PREJUDICE  
(Doc. 33)

Plaintiff Norman Gerald Daniels III (“Plaintiff”), a state prisoner, is proceeding pro se and in forma pauperis in this civil action brought pursuant to 42 U.S.C. § 12132, the Americans with Disabilities Act. On October 5, 2015, Plaintiff filed a motion seeking the appointment of counsel.

Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn* 789 F.2d at 1331.

1 In the present case, the Court does not find the required exceptional circumstances. Even  
2 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
3 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with  
4 similar cases almost daily. Further, at this early stage in the proceedings, the Court cannot make a  
5 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record  
6 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims.<sup>1</sup> *Palmer*,  
7 560 F.3d at 970.

8 While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and  
9 his incarceration, and the Court additionally acknowledges Plaintiff's disability, the test is not  
10 whether Plaintiff would benefit from the appointment of counsel. *See Wilborn v. Escalderon*, 789  
11 F.2d 1328, 1331 (9th Cir. 1986) ("Most actions require development of further facts during  
12 litigation and a pro se litigant will seldom be in a position to investigate easily the facts necessary  
13 to support the case.") The test is whether exceptional circumstances exist and here, at this  
14 juncture, they do not.

15 Accordingly, Plaintiff's motion for the appointment of counsel is **HEREBY DENIED**,  
16 without prejudice.

17  
18 **IT IS SO ORDERED.**

19 Dated: **October 6, 2015**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**

20  
21  
22  
23  
24  
25  
26  
27 \_\_\_\_\_  
28 <sup>1</sup> Defendant Sherman waived service of the summons and amended complaint, and his first response to the amended  
complaint is due on October 9, 2015. (Doc. 32.) Thus, at this juncture discovery is not open and there are no pending  
deadlines applicable to Plaintiff.