

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

DANA GRAY,

Plaintiff,

vs.

ROMERO, et al.,

Defendants.

1:13-cv-01473-DAD-GSA-PC

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL, WITHOUT  
PREJUDICE  
(ECF No. 186.)

On April 5, 2017, 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). 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 she is indigent, unable to afford counsel, has limited knowledge of  
2 the law, and has limited access to the library due to disability and numerous lockdowns.  
3 Plaintiff also asserts that her case is complex and involves medical issues that may require  
4 expert testimony.

5 The Court cannot make a determination in this case that Plaintiff is likely to succeed on  
6 the merits, because there is no complaint on file upon which the case proceeds. On March 28,  
7 2017, the Court granted defendant Rebel's motion to dismiss the Fourth Amended Complaint,  
8 with leave to file a Fifth Amended Complaint within thirty days. (ECF No. 184.) Plaintiff has  
9 not filed the Fifth Amended Complaint. Therefore, there is no complaint on file upon which  
10 this case can proceed.

11 Based on the record for this case, Plaintiff is able to adequately articulate her claims and  
12 respond to court orders. Id. Moreover, the legal issue in this case – whether defendants  
13 deliberately disregarded a substantial risk of serious harm to Plaintiff's health -- is not complex.  
14 Therefore, Plaintiff's motion shall be denied, without prejudice to renewal of the motion at a  
15 later stage of the proceedings.

16 Accordingly, for the foregoing reasons, Plaintiff's motion for the appointment of  
17 counsel is HEREBY DENIED, without prejudice.

18  
19 IT IS SO ORDERED.

20 Dated: April 13, 2017

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE