



1 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the  
2 voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

3 Without a reasonable method of securing and compensating counsel, the court will seek  
4 volunteer counsel only in the most serious and exceptional cases. In determining whether  
5 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
6 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
7 legal issues involved.” Id. (internal quotation marks and citations omitted). The burden of  
8 demonstrating exceptional circumstances is on the plaintiff. Palmer v. Valdez, 560 F.3d 965, 970 (9th  
9 Cir. 2009). Circumstances common to most prisoners, such as lack of legal education and limited law  
10 library access, do not establish exceptional circumstances that warrant a request for voluntary  
11 assistance of counsel.

12 In the present case, the Court does find that neither the interests of justice nor exceptional  
13 circumstances warrant appointment of counsel at this time. LaMere v. Risley, 827 F.2d 622, 626 (9th  
14 Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff seeks the appointment of  
15 counsel based on his indigent status, the limitations on his ability to litigate due to his imprisonment,  
16 the potential of presenting conflicting testimony at any trial in this case, and the need for advice from  
17 counsel during his scheduled deposition. Plaintiff’s circumstances are no different than any other  
18 prisoner, and Plaintiff has failed to demonstrate exceptional circumstances to warrant the appointment  
19 of voluntary counsel in this action. While a pro se litigant may be better served with the assistance of  
20 counsel, so long as a pro se litigant, such as Plaintiff in this instance, is able to “articulate his claims  
21 against the relative complexity of the matter,” the “exceptional circumstances” which might require  
22 the appointment of counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of  
23 discretion under 28 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact  
24 that pro se prisoner “may well have fared better-particularly in the realm of discovery and the securing  
25 of expert testimony.”) Accordingly, Plaintiff’s motion for appointment of counsel must be DENIED.

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**B. Protective Order**

Plaintiff seeks a protective order under Federal Rules of Civil Procedure 26(c)(1) and 30(a) to prevent Defendant from taking his deposition.

Plaintiff indicates that he received a Notice of deposition to take place on November 17, 2015. Plaintiff contends that he can only be deposed upon leave of the Court on such terms as the Court prescribes. Plaintiff is mistaken. Pursuant to the September 18, 2014, discovery and scheduling order, the parties were specifically advised as follows:

Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant may depose Plaintiff and any other witness confined in a prison upon condition that, at least fourteen (14) days before such a deposition, Defendant serves all parties with the notice required by Federal Rule of Civil Procedure 30(b)(1). Pursuant to Federal Rule of Civil Procedure 30(b)(4), the parties may take any deposition under this section by video conference without a further motion or order of the Court. Nothing herein forecloses a party from bringing a motion for a protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.

(ECF No. 14, Order at 2:4-9.)

Rule 26 of the Federal Rules of Civil Procedure provides that:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending-or as an alternative on matters relating to a deposition... The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

Fed. R. Civ. P. 26.

Plaintiff seeks a protective order based on his claim that he is entitled to appointment of counsel; however, Plaintiff's request must be denied for the reasons stated above in section A. Plaintiff has simply failed to carry his burden to demonstrate that good cause exists for issuance of a protective order. Plaintiff initiated this action and is required to respond to discovery requests from Defendant. Plaintiff is forewarned that the failure to attend a properly noticed deposition may result in an order requiring Plaintiff to pay Defendant the reasonable expenses for attending the deposition, including attorney's fees. Fed. R. Civ. P. 30(g). Plaintiff may also be sanctioned for failing to attend

1 a properly noticed deposition. Fed. R. Civ. P. 37(d). Sanctions may include an order dismissing this  
2 action. Fed. R. Civ. P. 37(b)(2)(A)(v). Plaintiff may not delay a deposition by filing frivolous  
3 requests to postpone the deposition.

4 **II.**

5 **ORDER**

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Plaintiff's motion for the appointment of counsel is DENIED; and  
8 2. Plaintiff's motion for a protective order is DENIED.

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10 IT IS SO ORDERED.

11 Dated: November 5, 2015



12 UNITED STATES MAGISTRATE JUDGE