

1 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court
2 may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at
3 1525.

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

9 In the present case, the Court does not find the required exceptional circumstances. A review
10 of the record reflects that Plaintiff is articulate and able to comply with court orders, as well as file pro
11 se motions. Further, even if it assumed that plaintiff is not well versed in the law and that he has made
12 serious allegations which, if proved, would entitle him to relief, his case is not exceptional. Plaintiff
13 alleges a First Amendment claim of retaliation against Defendant K. Brandon. The legal issues
14 present in this action are not complex, and Plaintiff has thoroughly set forth his allegations in the
15 complaint. While a pro se litigant may be better served with the assistance of counsel, so long as a pro
16 se litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative
17 complexity of the matter,” the “exceptional circumstances” which might require the appointment of
18 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28
19 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner
20 “may well have fared better-particularly in the realm of discovery and the securing of expert
21 testimony.”) Accordingly, Plaintiff’s third motion for the appointment of counsel shall be denied,
22 without prejudice.

23 **B. Mental Examination**

24 Rule 35 of the Federal Rules of Civil Procedure allows a court, on a motion for good cause, to
25 order a mental examination by a suitably licensed or certified examiner of a party whose mental
26 condition is “in controversy.” Fed. R. Civ. P. 35(a); Schlagenhauf v. Holder, 379 U.S. 104, 118
27 (1964). The requirements “are not met by mere conclusory allegations of the pleadings—nor by mere
28 relevance of the case—but require an affirmative showing by the movant that each condition as to

1 which the examination is sought is really and genuinely in controversy and that good cause exists for
2 ordering each particular examination.” Schlagenhauf, 379 U.S. at 118.

3 Here, Plaintiff requests a mental examination by an outside psychologist in lieu of the
4 examination through the California Department of Corrections and Rehabilitation (CDCR) because he
5 claims such evaluations are biased. Plaintiff cannot request nor can the Court grant an outside
6 psychological examination merely because he does not agree with the examination provided by
7 CDCR. Moreover, there is no showing that Plaintiff’s mental condition is “in controversy.”
8 Accordingly, Plaintiff’s motion for a court order mental examination must be denied.

9 **II.**

10 **ORDER**

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

- 12 1. Plaintiff’s motion for appointment of counsel is DENIED; and
13 2. Plaintiff’s request for a mental examination is DENIED.

14
15 IT IS SO ORDERED.

16 Dated: June 2, 2016



17 UNITED STATES MAGISTRATE JUDGE