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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PERCY LEE RHODES,)	Case No.: 1:15-cv-01714-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION FOR
v.)	APPOINTMENT OF COUNSEL, WITHOUT
)	PREJUDICE
FRESNO COUNTY, et al.,)	
)	[ECF No. 26]
Defendants.)	
)	
)	

Plaintiff Percy Lee Rhodes is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge on November 23, 2015. Local Rule 302.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed October 27, 2016. Plaintiff requests appointment of counsel because he is indigent, has limited access to the law library, and the complexity of the action.

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 any 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.

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

6 The test for exceptional circumstances requires the Court to evaluate the Plaintiff’s likelihood
7 of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the
8 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.
9 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most
10 prisoners, such as lack of legal education and limited law library access, do not establish exceptional
11 circumstances that would warrant a request for voluntary assistance of counsel. Furthermore, the fact
12 that Plaintiff is proceeding in forma pauperis does not entitle him to counsel. While a prose litigant
13 may be better served with the assistance of counsel, so long as a pro se litigant, such as Plaintiff in this
14 instance, is able to “articulate his claims against the relative complexity of the matter,” the
15 “exceptional circumstances” which might require the appointment of counsel do not exist. Rand, 113
16 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied
17 appointment of counsel despite fact that pro se prisoner “may well have fared better – particularly in
18 the realm of discovery and the security of expert testimony.”) In sum, the Court finds Plaintiff’s
19 reasons for requesting appointment of counsel indistinguishable from the reasons asserted by most
20 prisoners. Plaintiff filed a second amended complaint on August 17, 2016, which will be screened by
21 the Court in due course. 28 U.S.C. § 1915A. Accordingly, Plaintiff’s motion for appointment of
22 counsel is be DENIED without prejudice.

23
24 IT IS SO ORDERED.

25 Dated: October 28, 2016


UNITED STATES MAGISTRATE JUDGE

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