

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NICHOLAS PATRICK,

Plaintiff,

v.

C/O REYNAGA, et al.,

Defendants.

Case No. 1:16-cv-00239-LJO-SAB-PC

ORDER DENYING PLAINTIFF’S SECOND  
MOTION FOR APPOINTMENT OF  
COUNSEL (ECF NOS. 9, 11)

Plaintiff Nicholas Patrick is a state prisoner appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On May 9 and May 16, 2016, Plaintiff filed motions for the appointment of counsel. Plaintiff’s first motion for appointment of counsel was denied on May 10, 2016. (ECF No. 10.) .

Plaintiff is advised that there is no 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.

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 on 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).

In the present case, the Court has considered Plaintiff’s moving papers, but does not find the required exceptional circumstances. LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). In his first motion for the appointment

1 of counsel, Plaintiff argued that he was indigent and could not afford counsel. In his second  
2 motion, Plaintiff indicates that he is inexperienced and is a participant in the mental health  
3 system at Wasco State Prison. On May 20, 2016, an order was entered, dismissing the complaint  
4 and granting Plaintiff leave to file an amended complaint. The complaint included unrelated  
5 claims, and asserted vague allegations that failed to link the Defendants with conduct that  
6 constituted a violation under 42 U.S.C. § 1983. The Court provided Plaintiff with clear  
7 direction, and the appropriate legal standards that apply to his claims. As noted, exceptional  
8 circumstances do not exist in this case, and Plaintiff is not entitled to appointment of counsel.  
9 That Plaintiff is not an attorney, is undergoing mental health treatment, or that Plaintiff may  
10 have difficulty litigating this case, does not constitute exceptional circumstances. The  
11 circumstances of incarceration do not constitute exceptional circumstances. The issues in this  
12 case are not complex, and the May 20, 2016, order provided Plaintiff with clear guidance in  
13 curing the deficiencies in his complaint. Plaintiff is reminded that in forma pauperis status  
14 alone does not alone entitle Plaintiff to appointed counsel.

15 While a pro se litigant may be better served with the assistance of counsel, so long as a  
16 pro se litigant, such as Plaintiff in this instance, is able to “articulate his claims against the  
17 relative complexity of the matter,” the “exceptional circumstances” which might require the  
18 appointment of counsel do not exist. Rand, 113 F.3d at 1525 (finding no abuse of discretion  
19 under 28 U.S.C. §1915(e) when district court denied appointment of counsel despite fact that pro  
20 se prisoner “may well have fared better – particularly in the realm of discovery and the securing  
21 of expert testimony.”) Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for the  
22 appointment of counsel is DENIED.

23 IT IS SO ORDERED.

24 Dated: May 24, 2016

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27 UNITED STATES MAGISTRATE JUDGE  
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