

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

EDWINA DOTSON,
Plaintiff,
v.
DARREL ADAMS, et al.,
Defendants.

Case No.: 1:17-cv-01199-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION
TO APPOINT COUNSEL, WITHOUT
PREJUDICE

(ECF No. 3)

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

On September 7, 2017, Plaintiff filed a motion requesting the appointment of counsel, on the basis of no legal background, the inability to afford counsel, the limitations of imprisonment, limited law library access, and the fact that counsel could better present evidence and cross examine witnesses. (ECF No. 3.)

Plaintiff does not have a constitutional right to appointed counsel in this action. Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds, 154 F.3d 952 n.1 (9th Cir. 1998). 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, 109 S. Ct. 1814, 1816 (1989). However, in certain exceptional circumstances, the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,

1 113 F.3d at 1525. Without a reasonable method of securing and compensating counsel, the Court
2 will seek volunteer counsel only in the most serious and exceptional cases. In determining
3 whether “exceptional circumstances exist, the district court must evaluate both the likelihood of
4 success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of
5 the complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances, and
7 Plaintiff has not identified any circumstances warranting appointment of counsel. Circumstances
8 common to most prisoners, such as lack of legal education and limited law library access, do not
9 establish exceptional circumstances that would warrant a request for voluntary assistance of
10 counsel. Further, at this early stage in the litigation, where the Court has not yet screened
11 Plaintiff’s complaint, the Court cannot make a determination that Plaintiff is likely to succeed on
12 the merits.

13 For these reasons, Plaintiff’s request for the appointment of counsel is HEREBY
14 DENIED, without prejudice.

15
16 IT IS SO ORDERED.

17 Dated: September 13, 2017

/s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE