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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COURTNEY LUTHER MILES, II,
Plaintiff,
v.
V. CRENSHAW, et al.,
Defendants.

1:17-cv-01436 DAD-GSA-PC
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND/OR
FOR COURT ORDER ENSURING THAT
PLAINTIFF STAY IN CONTACT WITH
OTHER INMATE
(ECF No. 6.)

I. BACKGROUND

Courtney Luther Miles II (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On October 25, 2017, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On November 1, 2017, Plaintiff filed a motion for appointment of counsel and/or for a court order ensuring that Plaintiff stay in contact with another inmate named Xavier Nailing. (ECF No. 6.)

II. MOTION FOR APPOINTMENT OF COUNSEL

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 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

1 certain exceptional circumstances the court may request the voluntary assistance of counsel
2 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 of
6 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
7 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

8 In the present case, the court does not find the required exceptional circumstances. At this
9 early stage in the proceedings, the court cannot make a determination that Plaintiff is likely to
10 succeed on the merits. Plaintiff filed the Complaint on October 25, 2017, less than a month ago,
11 and the Complaint awaits the court’s screening required under 28 U.S.C. § 1915. Thus, to date
12 the court has not found any cognizable claims in Plaintiff’s Complaint for which to initiate
13 service of process, and no other parties have yet appeared. Therefore, Plaintiff’s motion shall be
14 denied without prejudice to renewal of the motion at a later stage of the proceedings.

15 **III. MOTION FOR COURT ORDER**

16 Plaintiff requests a court order ensuring that he stay in contact with another inmate named
17 Xavier Nailing. Plaintiff asserts that inmate Nailing has experience with Federal Civil
18 Complaints, has filed § 1983 cases in the past, and helped Plaintiff draft his Complaint. Plaintiff
19 seeks to stay in contact with inmate Xavier Nailing, who has now been transferred to another
20 prison.

21 Inmates may only correspond with one another if they obtain written authorization from
22 the appropriate prison officials. Cal. Code Regs., tit. 15 § 3139 (2017). Inmates may initiate
23 requests to correspond with other inmates who are under the jurisdiction of any county, state or
24 federal, juvenile or adult correctional agency by contacting their Correctional Counselor I (CCI).
25 Id. Plaintiff is advised to follow procedures and use the available resources at the prison to obtain
26 written authorization after consideration by prison officials of safety, security, and procedural
27 priorities. The Court recognizes that prison administrators “should be accorded wide-ranging
28 deference in the adoption and execution of policies and practices that in their judgment are

1 needed to preserve internal order and discipline and to maintain institutional security.” Whitley
2 v. Albers, 475 U.S. 312, 321-322 (1986) (quoting Bell v. Wolfish, 441 U.S. 520, 547 (1970);
3 Norwood v. Vance, 591 F.3d 1062, 1066-67 (9th Cir. 2010).

4 Further, the Court does not have jurisdiction in this action over anyone other than Plaintiff
5 at this stage of the case, and cannot order prison officials to allow Plaintiff to correspond with
6 other inmates. E.g., City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665
7 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454
8 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of Los Angeles, 444 F.3d 1118, 1126
9 (9th Cir. 2006). Therefore, Plaintiff’s motion must be denied.

10 **IV. CONCLUSION**

11 Based on the foregoing, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff’s motion for appointment of counsel, filed on November 1, 2017, is
13 DENIED without prejudice; and
- 14 2. Plaintiff’s motion for a court order ensuring that he stay in contact with inmate
15 Xavier Nailing is DENIED.

16 IT IS SO ORDERED.

17
18 Dated: November 13, 2017

18 /s/ Gary S. Austin
19 UNITED STATES MAGISTRATE JUDGE