

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**

SAM DRAKE,	)	Case No.: 1:17-cv-01500-AWI-SAB (PC)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING, WITHOUT PREJUDICE,
	)	PLAINTIFF’S SECOND MOTION FOR
SCOTT KERNAN, et al.,	)	APPOINTMENT OF COUNSEL
	)	
Defendants.	)	[ECF No. 39]
	)	
	)	

---

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

Currently before the Court is Plaintiff’s second motion for appointment of counsel, filed December 5, 2018.

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

7 In the present case, the Court does not find the required exceptional circumstances. Even if it  
8 assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if  
9 proved, would entitle him to relief, his case is not exceptional. The legal issues present in this action  
10 are not complex, and Plaintiff has thoroughly set forth his allegations in the complaint. In addition, at  
11 this early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to  
12 succeed on the merits, and based on a review of the record in this case, the Court does not find that  
13 Plaintiff cannot adequately articulate his claims. Id.

14 Plaintiff contends that after his transfer to the Fresno County Jail on October 22, 2018, he has  
15 been without his legal property and access to the law library. In general, circumstances common to  
16 most prisoners, such as lack of legal education and limited law library access, do not establish  
17 exceptional circumstances that would warrant a request for voluntary assistance of counsel. In support  
18 of his claim, Plaintiff attaches the jail’s policy regarding access to the law library which in general  
19 limits such access involving only pending criminal cases. However, the jail’s prison policy clearly  
20 demonstrates that Plaintiff can request access to the LexisNexis Kiosk by producing a court order  
21 which requires access. At the present time, there are no pending deadlines for which Plaintiff must  
22 comply. Indeed, Defendants have not yet filed an answer to the complaint and the deadline to do so  
23 does not expire until December 12, 2018. Therefore, the Court does not find the required exceptional  
24 circumstances.

25 ///

26 ///

27 ///

28 ///

1 For the foregoing reasons, Plaintiff's second motion for the appointment of counsel is  
2 HEREBY DENIED, without prejudice.

3  
4 IT IS SO ORDERED.

5 Dated: December 6, 2018

  
UNITED STATES MAGISTRATE JUDGE