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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,  
Plaintiff,  
v.  
DR. SAO, et al.,  
Defendants.

Case No. 1:18-cv-00484-DAD-EPG (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
FOR APPOINTMENT OF PRO BONO  
COUNSEL WITHOUT PREJUDICE  
(ECF NO. 3)

James Kelly (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On April 9, 2018, Plaintiff filed a motion for appointment of pro bono counsel. (ECF No. 3).

Plaintiff asks for appointment of counsel so that his interests may be protected by professional assistance. Plaintiff cites to California Rules of Court, Rule 4.551(c)(2).<sup>1</sup>

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.

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<sup>1</sup> The Court notes that Rule 4.551(c)(2) applies to habeas corpus proceedings. Plaintiff filed a § 1983 action, not a habeas corpus petition. Moreover, Plaintiff filed his case in federal court, not state court.

1 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds, 154 F.3d 952  
2 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff pursuant to 28  
3 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa,  
4 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances  
5 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,  
6 113 F.3d at 1525.

7 Without a reasonable method of securing and compensating counsel, the Court will seek  
8 volunteer counsel only in the most serious and exceptional cases. In determining whether  
9 “exceptional circumstances exist, a district court must evaluate both the likelihood of success of  
10 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the  
11 complexity of the legal issues involved.” Id. (internal quotation marks and citation omitted).

12 The Court will not order appointment of pro bono counsel at this time. The Court has  
13 reviewed the record in this case, and at this time the Court is unable to make a determination that  
14 Plaintiff is likely to succeed on the merits of his claims. Moreover, while there may be some  
15 issues, based on the complaint it appears that Plaintiff can adequately articulate his claims.

16 Plaintiff is advised that he is not precluded from renewing his motion for appointment of  
17 pro bono counsel at a later stage of the proceedings.

18 For the foregoing reasons, IT IS ORDERED that Plaintiff’s motion for appointment of pro  
19 bono counsel is DENIED without prejudice.

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21 IT IS SO ORDERED.

22 Dated: May 22, 2018

23 /s/ Eric P. Gray  
24 UNITED STATES MAGISTRATE JUDGE  
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