

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**

CHRISTOPHER J. MILLER,)	Case No.: 1:20-cv-01117-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING SECOND PLAINTIFF’S
v.)	MOTION FOR APPOINTMENT OF COUNSEL,
)	WITHOUT PREJUDICE
SERGEANT M. SOTO,)	
)	(ECF No. 43)
Defendant.)	
)	
)	
)	

Plaintiff Christopher Miller is proceeding *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 January 5, 2022.

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

1 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
2 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
3 legal issues involved.” Id. (internal quotation marks and citations omitted).

4 In the present case, the Court does find that neither the interests of justice nor exceptional
5 circumstances warrant appointment of counsel at this time. LaMere v. Risley, 827 F.2d 622, 626 (9th
6 Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff contends he is in need of
7 counsel due to his lack of knowledge of the law and to prosecute his case. Plaintiff is proceeding on a
8 claim of retaliation against Defendant Soto and the legal issues present in this action are not complex,
9 and Plaintiff has thoroughly set forth his allegations in the complaint.

10 While a pro se litigant may be better served with the assistance of counsel, so long as a pro se
11 litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative
12 complexity of the matter,” the “exceptional circumstances” which might require the appointment of
13 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28
14 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner
15 “may well have fared better-particularly in the realm of discovery and the securing of expert
16 testimony.”) Circumstances common to most prisoners, such as lack of legal education and limited
17 law library access, do not establish exceptional circumstances that would warrant a request for
18 voluntary assistance of counsel. The Court finds that Plaintiff is in no different position than any other
19 pro se litigant. Thus, the Court does not find exceptional circumstances warranting the appointment of
20 counsel at this time. Accordingly, Plaintiff second motion for appointment of counsel is DENIED,
21 without prejudice.

22
23 IT IS SO ORDERED.

24 Dated: January 7, 2022



UNITED STATES MAGISTRATE JUDGE