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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON L. COOPER,

Plaintiff,

No. CIV S-05-1043 GEB JFM P

vs.

CAL TERHUNE, Director of C.D.C., et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not, however, filed a complete in forma pauperis application or paid the required filing fee. See 28 U.S.C. §§ 1914(a), 1915(a).¹ Plaintiff will be provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the appropriate filing fee.

Plaintiff has also requested the appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298

¹ As noted infra, plaintiff has filed an application for appointment of counsel and included therewith an affidavit of poverty. The affidavit does not, however, satisfy the requirements for an in forma pauperis application by a prisoner. See 28 U.S.C. § 1915.

1 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
2 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
3 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
4 court does not find the required exceptional circumstances. Plaintiff's request for the
5 appointment of counsel will therefore be denied.

6 In accordance with the above, IT IS HEREBY ORDERED that:

7 1. Plaintiff shall submit, within thirty days from the date of this order, an affidavit
8 in support of his request to proceed in forma pauperis on the form provided by the Clerk of
9 Court, or the appropriate filing fee; plaintiff's failure to comply with this order will result in the
10 dismissal of this action;

11 2. Plaintiff's May 26, 2005 request for the appointment of counsel is denied; and

12 3. The Clerk of the Court is directed to send plaintiff a new Application to
13 Proceed In Forma Pauperis By a Prisoner.

14 DATED: June 3, 2005.

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17 UNITED STATES MAGISTRATE JUDGE

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