

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KEVIN KING,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

NO. CIV. S-06-0065 LKK/GGH P

O R D E R

\_\_\_\_\_/

Trial is scheduled to begin in the above captioned case on February 1, 2011. This order disposes of several issues prior to the start of trial.

The court continued this trial on January 5, 2011. On January 6, 2011, defendant Jeffrey William Rohlfing informed the court that he "has a pre-planned, pre-paid vacation out of the country from February 7, 2011 to February 25, 2011." Defendants believe that the trial should conclude in three days. Plaintiff has made no representation as to the expected length of trial. It appears to the court that the trial should conclude by February 4, 2011. The

1 court, thus, will not continue trial in light of defendant  
2 Rohlfling's travel plans. This issue may be raised again at the  
3 first day of trial.

4 On January 10, 2011, plaintiff, a former prisoner proceeding  
5 pro se, filed a motion to appoint counsel dated December 20, 2010.  
6 Plaintiff represented that he suffers from mental health issues  
7 that prevent him from adequately prosecuting his case. District  
8 courts may not require counsel to represent indigent prisoners in  
9 § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,  
10 298 (1989). They may, however, request the voluntary assistance of  
11 counsel in exceptional cases. Terrell v. Brewer, 935 F.2d 1015,  
12 1017 (9th Cir. 1991). The court has attempted to locate volunteer  
13 counsel for plaintiff given his severe mental health concerns, yet  
14 has been unable to do so. Thus, plaintiff's motion to appoint  
15 counsel is denied.

16 Additionally, the court is concerned that plaintiff may not  
17 appear for trial. Specifically, in his motion to appoint counsel,  
18 plaintiff indicated that he has not received notices from the court  
19 concerning the continuance of the trial date. Further, despite his  
20 appearance at the July 26, 2010 trial confirmation hearing, he has  
21 not filed any trial documents. In fact, until plaintiff filed his  
22 motion for appointment of counsel, the court had not heard from  
23 plaintiff since his September 22, 2010 motion for miscellaneous  
24 relief. Defendants, however, filed their trial documents (proposed  
25 jury instructions, proposed voir dire, trial briefs, a motion in  
26 limine, and objections to plaintiff's exhibits). For this reason,


1 the court orders plaintiff to call Ana Rivas, Courtroom Deputy, at  
2 916-930-4133 by 12:00 p.m. on Monday, January 31, 2011 to confirm  
3 his intent to try this case. Failure to do so will result in  
4 dismissal of the case.

5 For the foregoing reasons, the court ORDERS as follows:

- 6 (1) The trial SHALL NOT be further continued.
- 7 (2) Plaintiff's motion for appointment of counsel is DENIED.  
8 (Doc. 157).
- 9 (3) Plaintiff shall call Ana Rivas, Courtroom Deputy, at  
10 916-930-4133 by 12:00 p.m. on January 31, 2011, to  
11 confirm his intent to prosecute this action. Failure to  
12 do so will result in dismissal of the case.
- 13 (4) The Clerk of Court is instructed to serve this order  
14 upon plaintiff via certified mail.

15 IT IS SO ORDERED.

16 DATED: January 19, 2011.

17  
18   
19 LAWRENCE K. KARLTON  
20 SENIOR JUDGE  
21 UNITED STATES DISTRICT COURT  
22  
23  
24  
25  
26