

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

LAZARUS ORTEGA,	)	2: 08-CV-00588 SOM
	)	
Plaintiff,	)	
	)	ORDER DENYING REQUEST FOR
vs.	)	APPOINTMENT OF COUNSEL; ORDER
	)	DENYING MOTION FOR TEMPORARY
	)	RESTRAINING ORDER
CALIFORNIA DEPARTMENT OF	)	
CORRECTIONS AND	)	
REHABILITATION CORRECTIONAL	)	
OFFICER DEASON; CALIFORNIA	)	
DEPARTMENT OF CORRECTIONS	)	
AND REHABILITATION	)	
CORRECTIONAL OFFICER	)	
HUTCHINGS; CALIFORNIA	)	
DEPARTMENT OF CORRECTIONS	)	
AND REHABILITATION STAFF	)	
PSYCHOLOGIST COSTA;	)	
CALIFORNIA DEPARTMENT OF	)	
CORRECTIONS AND	)	
REHABILITATION LIEUTENANT	)	
WILLIAMS; CALIFORNIA	)	
DEPARTMENT OF CORRECTIONS	)	
AND REHABILITATION ASSOCIATE	)	
WARDEN REYES; and CALIFORNIA	)	
DEPARTMENT OF CORRECTIONS	)	
AND REHABILITATION WARDEN	)	
WALKER,	)	
	)	
Defendants.	)	
	)	

ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL;  
ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Lazarus Ortega is a prisoner proceeding pro se. Ortega asserts that he made multiple requests to change cells because his cellmate was dangerous, but Defendants failed to respond or move him to a new cell. Ortega seeks to hold Defendants liable under 42 U.S.C. § 1983 for the assault that he subsequently suffered at the hands of his cellmate.

This court has previously denied Ortega's request for appointment of counsel. On March 3, 2011, Ortega renewed that request.

Generally, a person has no right to counsel in civil actions. See Storseth v. Spellman, 654 F.2d 1349, 1353 (9<sup>th</sup> Cir. 1981). However, a court may under "exceptional circumstances" appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9<sup>th</sup> Cir. 2004), cert. denied sub nom. Gerber v. Agyeman, 545 U.S. 1128, 125 S. Ct. 2941, 162 L. Ed.2d 867 (2005). When determining whether "exceptional circumstances" exist, a court must consider "the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved." Weygandt v. Look, 718 F.2d 952, 954 (9<sup>th</sup> Cir. 1983). Neither of these considerations is dispositive and instead must be viewed together. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986).

Palmer v. Valdez, 560 F.3d 965, 970 (9<sup>th</sup> Cir. 2009).

Ortega's appointment of counsel request does not demonstrate "exceptional circumstances." Although Ortega submits medical reports indicating various conditions, this court cannot tell how severe his conditions are or the extent to which those conditions impair his ability to litigate this case. The court notes that Ortega has demonstrated an ability to "articulate his claims pro se" in this relatively uncomplicated case. Ortega's request for appointment of counsel rests in large part on his being in administrative segregation, unable to use the law

library except for a few hours per week. Ortega does not explain why he is in administrative segregation or how long he will likely be housed there. Although Ortega's request for appointment of counsel is denied because he has failed on the record before this court to demonstrate "exceptional circumstances," he may renew that request on a different record.

Ortega also seeks a temporary restraining order that requires the prison to give him greater access to the law library. That request is denied. In Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 376 (2008), the Supreme Court explained that a plaintiff seeking an injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter, 129 S. Ct. at 374. The Ninth Circuit has recently examined Winter, concluding that Winter left room for applying what had been the Ninth Circuit's "serious questions" test. Alliance for Wild Rockies v. Cottrell, \_\_ F.3d \_\_, 2011 WL 208360, at \*4 (9<sup>th</sup> Cir. Jan. 25, 2011) ("the 'serious questions' version of the sliding scale test for preliminary injunctions remains viable after the Supreme Court's decision in Winter"). Ortega fails to demonstrate any immediate irreparable injury, as he is only complaining that he needs to spend more time in the prison law library. Under the

present circumstances and given the paucity of information in the record regarding Ortega's present administrative segregation, this court is reluctant to interfere with the day-to-day operations of the prison by requiring the prison to provide Ortega with additional time in the library. Ortega may file a separate motion requesting a reasonable amount of additional time to comply with a specific deadline.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 16, 2011.

/s/ Susan Oki Mollway  
Susan Oki Mollway  
United States District Judge

Ortega v. Deason, et al., 2: 08-CV-00588 SOM; ORDER DENYING REQUEST FOR APPOINTMENT OF COUNSEL; ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER