

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

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

KEVIN DALE MARTIN,

No. CIV S-08-1578-CMK-P

Plaintiff,

vs.

ORDER

McNUT, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s motions for appointment of counsel (Doc. 39), for a transfer and an extension of time for discovery (Doc. 35), and for an order to obtain witness information (Doc. 38).

As to plaintiff’s request for appointment of counsel, plaintiff has previously been informed that the United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36

1 (9th Cir. 1990). In the present case, the court does not at this time find the required exceptional
2 circumstances.

3 As to plaintiff's request for additional time to conclude discovery, the court finds
4 good cause exists and will grant that request. The discovery deadline will be extended to April 4,
5 2011. Thus, all requests for discovery shall be served by this date. The scheduling order is
6 modified accordingly; discovery motions shall be filed within 60 days of the new discovery
7 deadline, and dispositive motions shall be filed within 90 days of the new discovery deadline.

8 As to plaintiff's request for transfer, he was previously housed at High Desert
9 State Prison and had requested a transfer from there due to his medical condition. Plaintiff has
10 now informed the court that he has been transferred to the Correctional Training Facility in
11 Soledad. Therefore, his request for a transfer will be denied as moot.

12 Finally, plaintiff has requested a court order for information relating to the
13 location of several incarcerated individuals. It appears that Plaintiff's request is actually more of
14 a discovery request, which needs to be propounded on the defendants in this action. To the
15 extent plaintiff intended his motion to be a motion to compel under Federal Rule of Civil
16 Procedure 37, plaintiff has not provided the court with sufficient information regarding the
17 questions propounded on defendants and the responses thereto. As plaintiff has requested, and
18 the undersigned is granting, additional time for the parties to complete discovery in this matter,
19 plaintiff may avail himself of the discovery methods allowed, including bringing a proper motion
20 to compel if necessary. However, his current motion for a court order will be denied.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's request for the appointment of counsel (Doc. 39) is denied;
- 23 2. Plaintiff's motion for an extension of the discovery deadline (Doc. 35) is
24 granted;
- 25 3. The parties may continue to conduct discovery until April 4, 2011;

26 ///

1 4. The scheduling order is modified accordingly to extend the deadline for
2 filing discovery motions and dispositive motions;

3 5. Plaintiff's request for a transfer (Doc. 35) is denied as moot; and

4 6. Plaintiff's motion for a court order for locating witnesses (Doc. 38) is
5 denied.

6
7 DATED: February 16, 2011

8 
9 **CRAIG M. KELLISON**
10 UNITED STATES MAGISTRATE JUDGE