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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-09-0170 GEB DAD P

vs.

W. KRETCH, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel for the third time.

As the court previously advised plaintiff, 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 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,

1 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
2 common to most prisoners, such as lack of legal education and limited law library access, do not
3 establish exceptional circumstances that would warrant a request for voluntary assistance of
4 counsel. In the present case, the court does not find the required exceptional circumstances.

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's July 28, 2009 motion for
6 appointment of counsel (Doc. No. 17) is denied.

7 DATED: August 3, 2009.

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10 _____
11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

11 DAD:9:mp
12 beny0170.31(3)