

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

RONALD DAVENPORT,

Plaintiff,

No. 2:09-cv-3091 GEB EFB P

vs.

BEN LEE, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. He requests that the court appoint counsel. He also requests leave to proceed in forma pauperis on appeal.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See* 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). When determining whether “exceptional circumstances” exist, the court must consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

1 Having considered those factors, the court finds there are no exceptional circumstances in this
2 case. As noted, plaintiff already proceeds in forma pauperis. Rule 24 of the Federal Rules of
3 Appellate Procedure provides that “a party who has been permitted to proceed in an action in the
4 district court in forma pauperis . . . may proceed on appeal in forma pauperis without further
5 authorization unless . . . the district court shall certify that the appeal is not taken in good faith or
6 shall find that the party is otherwise not entitled so to proceed . . .” Fed. R. App. 24. This court
7 has not certified that plaintiff's appeal is not taken in good faith or otherwise found that plaintiff
8 is not entitled to proceed on appeal *in forma pauperis*. Therefore, plaintiff's request for leave to
9 proceed *in forma pauperis* on appeal is denied as unnecessary.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff's request for appointment of counsel, Dckt. No. 72, is denied.

12 2. Plaintiff's request for leave to proceed in forma pauperis, Dckt. No. 71, is denied as
13 unnecessary.

14 DATED: June 25, 2012.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE