

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

XAI XIONG,

Plaintiff,

No. 2:09-cv-3345 MCE GGH P

vs.

H. KIRKLAND, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Plaintiff has requested the appointment of counsel. 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 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). In the present case, the court does not find the required exceptional circumstances. The remaining claims in this case are not complex. Plaintiff’s request for the appointment of counsel will therefore be denied.

Plaintiff has also requested “subpoena forms.” See Doc. No. 59. Plaintiff is reminded to adhere to the schedule outlined in the court’s “Further Scheduling Order” for the submission of the subpoena forms. See Doc. No. 61. Plaintiff must also submit witness fees and

1 travel expenses for each unincarcerated witness to the U.S. Marshal with the completed subpoena  
2 forms.

3 Accordingly, IT IS HEREBY ORDERED that

4 1. Plaintiff's August 9, 2012, request for the appointment of counsel (Docket No.  
5 60) is denied; and

6 2. Plaintiff's request for subpoena forms (Docket No. 59) is granted. The Clerk  
7 shall forward to plaintiff three blank subpoena forms.

8 DATED: September 25, 2012

9  
10 /s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE

11 GGH:rb  
12 xion3345.31