

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**

ANTHONY JONES,

No. 2:10-CV-0033-MCE-CMK-P

Plaintiff,

vs.

ORDER

E. McATEE, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff seeks 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. 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 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal

1 issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be  
2 viewed together before reaching a decision. See id.

3           In the present case, the court does not at this time find the required exceptional  
4 circumstances. First, a review of the docket reflects that plaintiff has been able to articulate his  
5 claims and litigate this action on his own. Second, the issues raised are neither factually nor  
6 legally complex. Finally, the court cannot say at this stage of the proceeding whether plaintiff is  
7 likely or not to succeed on the merits. Given these considerations, the court cannot say at this  
8 time that exceptional circumstances exist warranting the appointment of counsel.

9           Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the  
10 appointment of counsel (Doc. 122) is denied.

11  
12 DATED: February 6, 2015

13   
14 **CRAIG M. KELLISON**  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26