

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

ROBERTO HERRERA,

Plaintiff,

No. CIV S-10-1154 MCE DAD P

vs.

P. STATTI,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s May 6, 2010 and June 1, 2010 motions for 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 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

1 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
2 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
3 common to most prisoners, such as lack of legal education and limited law library access, do not
4 establish exceptional circumstances that would warrant a request for voluntary assistance of
5 counsel. In the present case, the court does not find the required exceptional circumstances.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's May 6, 2010 motion for appointment of counsel (Doc. No. 3) is
8 denied; and

9 2. Plaintiff's June 1, 2010 motion for appointment of counsel (Doc. No. 10) is
10 denied.

11 DATED: June 8, 2010.

12
13 
14 _____
15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

16 DAD:sj
17 herr1154.31