

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

BRIAN DARNELL EDWARDS,

Plaintiff,

No. 2:10-cv-1264 JFM (PC)

vs.

HIGH DESERT STATE PRISON,
et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s original pleading is prepared on the form for a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. However, review of the allegations of the petition demonstrates that plaintiff is challenging conditions of his confinement rather than the fact or duration thereof. Accordingly, the action is construed as a civil rights action pursuant to 42 U.S.C. § 1983. See Wilwording v. Swenson, 404 U.S. 249, 251 (1971). Good cause appearing, plaintiff’s original pleading will be dismissed with leave to file an amended complaint on the form provided with this order.

Plaintiff has neither filed an in forma pauperis affidavit or paid the required filing fee. See 28 U.S.C. §§ 1914(a), 1915(a). Plaintiff will be provided the opportunity either to

////

1 submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit
2 the appropriate filing fee of \$350.00.

3 Finally, plaintiff has filed a motion for appointment of counsel. The United States
4 Supreme Court has ruled that district courts lack authority to require counsel to represent
5 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
6 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
7 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
8 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
9 court does not find the required exceptional circumstances. Plaintiff’s motion for the
10 appointment of counsel will therefore be denied.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. This action is construed as a prisoner civil rights action pursuant to 42 U.S.C. §
13 1983;

14 2. Plaintiff’s original pleading is dismissed with leave to file a civil rights
15 complaint within thirty days from the date of this order; the amended complaint must be prepared
16 on the form provided with this order, must bear the docket number assigned this case and must
17 be labeled “Amended Complaint”; plaintiff must file an original and two copies of the amended
18 complaint; failure to file an amended complaint in accordance with this order will result in a
19 recommendation that this action be dismissed.

20 3. Plaintiff shall submit, within thirty days from the date of this order, an affidavit
21 in support of his request to proceed in forma pauperis on the form provided by the Clerk of
22 Court, or the appropriate filing fee;

23 4. Failure to comply with either paragraph 2 or paragraph 3 of this order will
24 result in the dismissal of this action;

25 ////

26 ////

1 5. The Clerk of the Court is directed to send plaintiff a new Application to
2 Proceed In Forma Pauperis By a Prisoner and the court's form civil rights complaint pursuant to
3 42 U.S.C. § 1983 and accompanying instructions; and

4 6. Plaintiff's May 24, 2010 motion for appointment of counsel is denied.

5 DATED: June 8, 2010.

6
7 
8 UNITED STATES MAGISTRATE JUDGE

9 12
10 edwa1264.3a

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

BRIAN DARNELL EDWARDS,

Plaintiff,

No. 2:10-cv-1264 JFM (PC)

vs.

HIGH DESERT STATE PRISON,

et al.,

Defendants.

NOTICE OF AMENDMENT/

SUBMISSION OF FEE OR IFP APPLICATION

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

Amended Complaint

In Forma Pauperis Application OR Filing Fee

DATED:

Plaintiff