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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARLIN PENN,

Plaintiff,

No. CIV-S-10-2256 KJM P

vs.

MCDONALD, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983 together with a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. However, the certificate portion of the request which must be completed by plaintiff’s institution of incarceration has not been filled out. Also, plaintiff has not filed a certified copy of his prison trust account statement for the six month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915(a)(2). Plaintiff will be provided the opportunity to submit a completed in forma pauperis application and a certified copy in support of his application.

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

1 certain exceptional circumstances, the court may request the voluntary assistance of counsel
2 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
3 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
4 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
5 counsel will therefore be denied.

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

- 7 1. Plaintiff's motion for the appointment of counsel (docket no. 4) is denied;
- 8 2. Plaintiff's application to proceed in forma pauperis (Docket No. 6) is denied
9 without prejudice;
- 10 3. Plaintiff shall submit, within thirty days from the date of this order, a
11 completed affidavit in support of his request to proceed in forma pauperis on the form provided
12 by the Clerk of Court;
- 13 4. The Clerk of the Court is directed to send plaintiff a new Application to
14 Proceed In Forma Pauperis By a Prisoner; and
- 15 5. Plaintiff shall submit, within thirty days from the date of this order, a certified
16 copy of his prison trust account statement for the six month period immediately preceding the
17 filing of the complaint. Plaintiff's failure to comply with this order will result in a
18 recommendation that this action be dismissed without prejudice.

19 DATED: September 29, 2010.

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21 _____
22 U.S. MAGISTRATE JUDGE

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