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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY O’KEEFE,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

No. 2:11-cv-2659 KJM KJN P

ORDER

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. See 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). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances

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1 common to most prisoners, such as lack of legal education and limited law library access, do not
2 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

3 Plaintiff has competently litigated this action. Having considered the factors under
4 Palmer, the court finds that plaintiff has failed to meet his burden of demonstrating exceptional
5 circumstances warranting the appointment of counsel at this time.

6 On July 7, 2014, plaintiff filed a letter with the court stating that he has been put up for
7 transfer to a different prison. (ECF No. 145.) In this letter, plaintiff states that this transfer will
8 take him away from his family. Plaintiff states that he will have nothing to look forward to and
9 that, "I feel like when I get to my new prison just giving up...meaning I'll take my frustration out
10 on myself in a physical way."

11 The undersigned is concerned by the allegations in plaintiff's July 7, 2014 letter set forth
12 above. The defendants in this action include California Department of Corrections Director of
13 Mental Health Timothy Belavich. The undersigned directs the Clerk of the Court to serve a copy
14 of plaintiff's July 7, 2014 letter on defendants. Having brought plaintiff's letter to defendants'
15 attention, the court anticipates that defendants will take appropriate action in response.


16 Defendants are not required to file a response with the court.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion for the appointment of counsel (ECF No. 146) is denied without
19 prejudice;
- 20 2. The Clerk of the Court is directed to serve a copy of plaintiff's July 7, 2014 letter
21 (ECF No. 145) on defendants.

22 Dated: July 9, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE