

1 Presently pending is plaintiff's second request for appointment of counsel. See ECF Nos.
2 16, 17. Plaintiff avers, among other things, that he is "absolutely lost" in this litigation, ECF No.
3 38 at 9, due to his physical limitations (including cervical spondylosis) and associated pain; his
4 mental disabilities (including schizoaffective disorder and depression); and the side effects of his
5 pain and psychotropic medications. Plaintiff states that he is indigent and unlearned in the law,
6 and has previously relied on other inmates to prepare his court filings. Plaintiff has submitted an
7 affidavit from another prisoner who states that he has assisted plaintiff with his civil court
8 proceedings since 2013, but is no longer available because he is now tutoring GED students and
9 will soon be transferred to another institution. See ECF No. 38 at 11-2.

10 The United States Supreme Court has ruled that district courts lack authority to require
11 counsel to represent indigent prisoners in Section 1983 cases. Mallard v. United States Dist.
12 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may
13 request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,
14 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.
15 1990). When determining whether "exceptional circumstances" exist, the court must consider
16 plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to articulate his
17 claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d
18 965, 970 (9th Cir. 2009); see also Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986);
19 Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). The burden of demonstrating exceptional
20 circumstances is on the plaintiff. Palmer, 560 F.3d at 970. Circumstances common to most
21 prisoners, such as lack of legal education and limited law library access, do not establish the
22 requisite exceptional circumstances.

23 Several factors militate against appointment of counsel in this case. Plaintiff's indigence
24 and lack of legal training are circumstances common to most prisoners. Also, many prisoners
25 struggle with physical and mental disabilities and the side effects to medications. Significantly,

26 signs the document and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S.
27 266 (1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir.
28 2010) (applying the mailbox rule to both state and federal filings by incarcerated inmates).

1 plaintiff is a frequent litigator in this court; he has filed more than a dozen cases since 2010, and
2 currently has six open cases.² Plaintiff's numerous filings reduce the relative significance of each
3 case in the request for counsel context; the court cannot feasibly appoint counsel in each of
4 plaintiff's cases.

5 Additionally, the legal issues in this action are not particularly complex, and plaintiff is
6 well positioned to articulate his factual arguments pro se. The pending motion for summary
7 judgment examines twenty of plaintiff's administrative appeals which were reviewed by one or
8 more of the defendants. See ECF No. 32-2 at 2. Defendants contend that their challenged
9 conduct was not retaliatory but that they properly screened out or canceled each appeal according
10 to applicable rules and regulations, and that plaintiff failed to respond with a properly submitted
11 and corrected appeal. Any opposition to defendants' motion must rebut defendants' specific
12 factual allegations concerning each appeal. This task is more appropriately retained by plaintiff,
13 who submitted each appeal, than by appointed legal counsel. Moreover, because prisoners are not
14 entitled to prison grievance procedures as a matter of course, a claim that prison officials failed to
15 properly process or resolve a particular grievance is generally not cognizable,³ indicating that
16 plaintiff may not be able to succeed on the merits of his claims. Because only a limited number
17 of lawyers are available for voluntary appointment, their assignments must be limited to cases
18 which turn on complex legal issues and demonstrate a likelihood of success on the merits.

19 For these several reasons, the court finds that plaintiff has not met his burden of
20 demonstrating exceptional circumstances warranting appointment of counsel in the instant case at
21 the present time. However, in light of the court's decision, plaintiff will be accorded additional
22 time to file an opposition to the pending motion for summary judgment.

24 ² This court may take judicial notice of its own records and the records of other courts. See
25 United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631
26 F.2d 118, 119 (9th Cir. 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts
27 that are capable of accurate determination by sources whose accuracy cannot reasonably be
28 questioned).

³ See e.g. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Buckley v. Barlow, 997 F.2d
494, 495 (8th Cir. 1993).

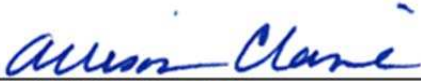
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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for appointment of counsel, ECF No. 38, is denied without prejudice; and
2. Plaintiff shall file and serve his opposition to the pending motion for summary judgment on or before July 15, 2015; defendants' reply, if any, shall be filed and served within 14 days thereafter.

SO ORDERED.

DATED: June 19, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE