



1           Plaintiff's Additional Requests for Appointment of Counsel

2           In a Discovery and Scheduling Order (DSO) filed on March 14, 2014, the discovery  
3 deadline was set as August 15, 2014 and the pretrial dispositive motion deadline was set a  
4 November 21, 2014. ECF No. 28. On May 28, 2014, plaintiff's motion for a stay of proceedings  
5 was denied. See ECF No. 42 (Order adopting Findings and Recommendations, ECF No. 35).  
6 By order filed on July 21, 2014, plaintiff's request for reconsideration of orders denying him  
7 appointment of counsel was denied as untimely. ECF No. 47. Plaintiff made a request to  
8 continue his deposition and another request for appointment of counsel on September 26, 2014,  
9 which were denied by order filed on October 6, 2014. ECF No. 49.

10           In that order, the court informed plaintiff once again that the United States Supreme Court  
11 has ruled that district courts lack authority to require counsel to represent indigent prisoners in §  
12 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain  
13 exceptional circumstances, the district court may request the voluntary assistance of counsel  
14 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);  
15 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional  
16 circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and  
17 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal  
18 issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9<sup>th</sup> Cir. 2009) (district court did not abuse  
19 discretion in declining to appoint counsel); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.  
20 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most  
21 prisoners, such as lack of legal education and limited law library access, do not establish  
22 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

23           In denying plaintiff's repeated request for appointment of counsel, the court stated:

24                   Plaintiff seeks counsel, stating that he is an "American with a  
25                   disability," has some mobility impairment, and is placed in the  
26                   CCCMS level of mental health care. ["The CCCMS level of care is  
27                   for inmates whose symptoms are under control or in partial  
28                   remission and can function in the general prison population,  
                    administrative segregation, or segregated housing units." Coleman  
                    v. Schwarzenegger, 922 F. Supp. 2d 882, 903 n. 24 (E.D. Cal.  
                    2009)] Plaintiff has previously been informed that his desire to  
                    have counsel for his deposition and the fact that he takes

1           psychotropic medication are not exceptional circumstances  
2 warranting appointment of counsel. ECF No. 30; see also, Order at  
3 ECF No. 35 at 2. Nor does deafness in plaintiff's left ear require  
4 appointment of counsel. ECF No. 35. Plaintiff's mobility  
5 impairment and CCCMS placement reflect challenges to which the  
6 court is not insensitive, but pro se inmates frequently have to deal  
7 with challenges of this nature in prosecuting their prisoner civil  
8 rights actions.

9           The court has found that the instant complaint states a cognizable  
10 claim for relief as to plaintiff's claims of the use of excessive force  
11 on two occasions by defendants who are West Sacramento Police  
12 Officers. The court has also previously noted that while it appeared  
13 that plaintiff had a reasonable chance of succeeding on his claims,  
14 the undersigned was unable to evaluate his likelihood of success on  
15 the merits at this point. See ECF Nos. 30, 35. It has also been  
16 observed by this court that the legal issues do not appear to be  
17 complex. Id. The circumstances relevant to these factors have not  
18 changed, and do not support the appointment of counsel.

19 ECF No. 49 at 2-3.

20           The circumstances presented in plaintiff's most recent requests for appointment of counsel  
21 appear to be the same as those previously considered. The requests are denied.

22           Plaintiff's Request Re: New Defendant

23           Included in one of his most recent requests for counsel, plaintiff refers in passing to his  
24 desire to add another West Sacramento police officer by the name of N. Barrio as a defendant.  
25 ECF No. 50 at 1. Plaintiff has provided no factual allegations implicating this individual in a  
26 violation of plaintiff's constitutional rights; he not made his request in the form of a motion for  
27 leave to amend; and he has not submitted a proposed amended complaint stating any claims  
28 against N. Barrio. To the extent plaintiff intended to seek leave to amend, the request is denied as  
inadequately supported.

29           Plaintiff's Request Re: Discovery

30           Plaintiff also makes a passing reference to wanting the police car video for trial, in order  
31 to show the defendants "d[e]spicable" behavior toward him. ECF No. 50 at 2. Evidence is not  
32 generally obtained by court order. If plaintiff wishes to obtain evidence from defendant(s), he  
33 must serve a request for production upon the defendant(s) pursuant to Fed. R. Civ. P. 34. If  
34 defendants' response to the Request for Production is inadequate, plaintiff may file a motion to  
35 compel production pursuant to Fed. R. Civ. P. 37.

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Amendment Of Discovery and Scheduling Order

In order to afford plaintiff the opportunity to bring a properly supported motion to compel discovery and to accommodate the relatively recent appearance of defendant Wright in this action, the court will re-open discovery and extend the deadlines of the DSO as follows: the discovery deadline is hereby re-set for February 27, 2015. The pretrial dispositive motion deadline is set for June 26, 2015.

Accordingly, IT IS ORDERED that:

1. Defendant Wright has discharged the show cause order at ECF No. 34, and renewed at ECF No. 40, by his response at ECF No. 41;
2. Plaintiff's renewed requests for appointment of counsel, ECF Nos. 50 and 51 are denied;
3. The deadlines set forth in the Discovery and Scheduling Order, ECF No. 28, are hereby vacated; and
4. The discovery deadline is hereby re-set for February 27, 2015. The pretrial dispositive motion deadline is now set for June 26, 2015.

DATED: December 29, 2014

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE