

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  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELINO CLEMENTE,  
Plaintiff,  
v.  
T. PARCIASEPE, et al.,  
Defendants.

No. 2:14-cv-0611 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983.

By order filed April 22, 2015, defendants were directed to inform the court of the status of plaintiff's legal materials. On May 11, 2015, defendants filed a response in which they provided property receipts demonstrating that plaintiff received "1-1/2 box[es] of misc. paperwork" on March 9, 2015, and that on April 21, 2015, plaintiff received "misc. paperwork and legal mail." (ECF Nos. 46 at 2-3; 46-1 at 2, 4.) Plaintiff did not note on either property receipt that "all" of his legal material was missing, and the receipts refute such a claim. However, if there are particular documents that plaintiff needs to oppose defendants' May 15, 2015 motion for summary judgment, plaintiff may seek copies, either from counsel for defendants or from the court.


///

1 Plaintiff requests that the court appoint counsel. District courts lack authority to require  
2 counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist.  
3 Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney  
4 to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d  
5 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
6 When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s  
7 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro  
8 se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970  
9 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The  
10 burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances  
11 common to most prisoners, such as lack of legal education and limited law library access, do not  
12 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

13 Having considered the factors under Palmer, the court finds that plaintiff has failed to  
14 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
15 counsel at this time.

16 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motions for the appointment of  
17 counsel (ECF Nos. 42, 45) are denied without prejudice.

18 Dated: May 21, 2015

19   
20 \_\_\_\_\_  
21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

23 /mp/cw/clem0611.31(2)  
24  
25  
26  
27  
28