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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICARDO PIMENTEL,
Plaintiff,
v.
BRETT MATHEW FLEMING,
Defendant.

No. 2:14-cv-1192 MCE DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel as he is incarcerated and has limited knowledge of the law. Plaintiff also requests a stay of these proceedings pending a decision on his motion for appointment of counsel. (ECF Nos. 59, 60.)

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 certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 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).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances

1 common to most prisoners, such as lack of legal education and limited law library access, do not
2 establish exceptional circumstances that would warrant a request for voluntary assistance of
3 counsel. Here, plaintiff seeks appointment of counsel based on the difficulties he faces in
4 conducting legal research because he is incarcerated and his limited knowledge of the law. These
5 factors do not amount to the required exceptional circumstances.

6 Because the court denies plaintiff's motion for the appointment of counsel, the court will
7 recommend plaintiff's motion to stay this case be denied. However, the court is concerned about
8 one statement plaintiff makes. In his motion for a stay, plaintiff states that a letter he wrote to an
9 attorney and gave to a correctional officer during mail pick up was never in fact mailed. If
10 plaintiff continues to experience interference with his legal mail involving this case, he may
11 contact the court for assistance.

12 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
13 counsel (ECF No. 59) is denied; and

14 IT IS HEREBY RECOMMENDED that plaintiff's motion to stay (ECF No. 60) be
15 denied.

16 These findings and recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. The document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
21 objections shall be filed and served within seven days after service of the objections. The parties
22 are advised that failure to file objections within the specified time may result in waiver of the
23 right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: January 10, 2018

25
26 DLB:9
27 DB/prisoner-civil rights/pime1192.31

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE