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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HILLIARD WILLIAMS,
Plaintiff,
v.
JAROM A. DASZKO, et al.,
Defendants.

No. 2:14-cv-1248 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action against two defendant physicians on claims that they were deliberately indifferent to plaintiff’s serious medical needs. Presently pending is plaintiff’s first request for appointment of counsel, which includes several exhibits demonstrating that plaintiff has been unable to obtain the voluntary assistance of counsel based on his own efforts. See ECF No. 43.

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

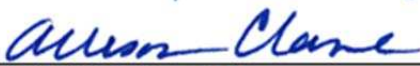
1 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
2 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
3 common to most prisoners, such as lack of legal education and limited law library access, do not
4 establish exceptional circumstances that would warrant a request for voluntary assistance of
5 counsel. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009).

6 In the present case, the court does not find the required exceptional circumstances at this
7 time. Although this court's review of this case indicates that plaintiff has a reasonable
8 opportunity of prevailing on the merits of his claims, plaintiff has, to date, adequately
9 demonstrated the ability to articulate his claims pro se. To prevail on his Eighth Amendment
10 claims, plaintiff must present evidence demonstrating that defendants were aware of plaintiff's
11 need for pain medication while recovering from his burn injuries but denied such relief. To
12 prevail on a claim for deliberate indifference to serious medical needs, a prisoner must
13 demonstrate that a prison official "kn[ew] of and disregard [ed] an excessive risk to inmate health
14 or safety; the official must both be aware of the facts from which the inference could be drawn
15 that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v.
16 Brennan, 511 U.S. 825, 837 (1994).

17 With this standard in mind, plaintiff should identify additional evidence that would
18 support his claims, and formulate his discovery requests accordingly.¹

19 Accordingly, IT IS HEREBY ORDERED that plaintiff's instant motion for the
20 appointment of counsel, ECF No. 43, is denied without prejudice.

21 DATED: April 4, 2016

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE

25 _____
26 ¹ Plaintiff's discovery requests may include the following: (1) requests for admission (yes-or-no
27 statements of fact) directed to each defendant, see Fed. R. Civ. P. 36; (2) up to twenty-five
28 interrogatories (questions) directed to each defendant, see Fed. R. Civ. P. 33; and (3) requests for
copies of documents, electronically stored information, or other tangible evidence directed to
each defendant, see Fed. R. Civ. P. 34.