1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 2:14-cv-2220 DAD P ROBERT WILLIAM TUNSTALL, JR., 12 Plaintiff, 13 V. ORDER 14 T. VIRGA, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested 18 appointment of counsel. 19 The United States Supreme Court has ruled that district courts lack authority to require 20 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 21 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the 22 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). 23 The test for exceptional circumstances requires the court to evaluate the plaintiff's 24 25 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in 26 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 27 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances 28 common to most prisoners, such as lack of legal education and limited law library access, do not 1

Dockets.Justia.com

establish exceptional circumstances that would warrant a request for voluntary assistance of counsel. In the present case, the court does not find the required exceptional circumstances.

Plaintiff also moves the court, due to his recent transfer to California Medical Facility and issues relating to his health, to be relieved of the responsibility of responding to any court orders until at least July 10, 2015. (ECF No. 14.) While the court declines to grant plaintiff's motion, as unforeseen events may require a more immediate response from plaintiff, the court will nevertheless take plaintiff's request into account in setting future deadlines for plaintiff in this matter.

For the reasons set forth above, IT IS HEREBY ORDERED that plaintiff's motions for the appointment of counsel (ECF No. 12, 13, 14, and 15) are denied.

Dated: April 27, 2015

DALE A. DROZD

UNITED STATES MAGISTRATE JUDGE