

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

CLARENCE ROBERSON,
Plaintiff,
v.
SGT. SINGH, et al.,
Defendants.

No. 2:14-cv-2302 WBS KJN P

ORDER

Plaintiff proceeds, in forma pauperis and without counsel, in this civil rights action filed pursuant to 42 U.S.C. § 1983. On August 7, 2015, plaintiff filed a request for another settlement conference. A settlement conference was held on June 30, 2015. Counsel for defendants had asked to continue the settlement conference so that she could review plaintiff's medical records, but the request was denied as plaintiff was already being transported. The case did not settle. Plaintiff now indicates a desire for further settlement negotiations. In light of plaintiff's recent settlement demand (ECF No. 39), it may be appropriate to have a further settlement conference.

Accordingly, within fourteen days, counsel for defendants shall inform the court whether a further settlement conference would be appropriate.

Plaintiff also requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an


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

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

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Within fourteen days from the date of this order, counsel for defendants shall inform
15 the court whether a further settlement conference is appropriate.
- 16 2. Plaintiff’s motion for the appointment of counsel (ECF No. 40) is denied without
17 prejudice.

18 Dated: August 18, 2015

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

23 robe2302.31kjin
24
25
26
27
28