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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES DAVID LOGAN, II,
Plaintiff,
v.
EVALYN HORWITZ, et al.,
Defendants.

No. 2:15-cv-0121 MCE AC P

ORDER

Plaintiff, a state prisoner, is proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the court are plaintiff’s motions for appointment of counsel (ECF Nos. 104, 108, 110), requests to amend the complaint (ECF Nos. 107, 109), and motion to appoint an expert witness (ECF No. 110).

Plaintiff has again requested appointment of counsel. ECF Nos. 104,108, 110. These requests will again be denied. 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).

“When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims

1 *pro se* in light of the complexity of the legal issues involved.” Palmer v. Valdez, 560 F.3d 965,
2 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
3 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
4 most prisoners, such as lack of legal education and limited law library access, do not establish
5 exceptional circumstances that would warrant a request for voluntary assistance of counsel.
6 Plaintiff has not demonstrated any likelihood of success on the merits and has so far been capable
7 of articulating his claims despite his failure to follow the court’s instructions. The court therefore
8 does not find the required exceptional circumstances and the requests for counsel will be denied
9 without prejudice.

10 Plaintiff also moves for leave to amend his complaint. ECF Nos. 107, 109. It appears that
11 he is seeking to amend the complaint to add claims based upon pain management and medication
12 issues with Doctor Ramada and psychiatric technician Badertcher. ECF No. 107 at 1; ECF No.
13 109 at 1, 3, 5, 12. Not only has plaintiff failed to provide a copy of the proposed amended
14 complaint, but neither the claims nor defendants are properly joined because the claims do not
15 involve the same defendants or arise out of the same transaction or occurrence identified in the
16 currently operative complaint. L.R. 137(c); Fed. R. Civ. P. 18; Fed. R. Civ. P. 20. In other
17 words, the new claims and defendants are not related to the claims currently in front of the court.
18 The request for leave to amend is therefore denied. Plaintiff is advised that he is not allowed to
19 simply add new defendants and claims to this case every time that medical staff do something that
20 he does not like or that he disagrees with.

21 Finally, plaintiff moves to appoint an expert witness. ECF No. 110. Federal Rule of
22 Evidence 706 authorizes the appointment of a neutral expert witness, with expenses shared by the
23 parties. The appointment of an independent expert witness pursuant to Rule 706 is within the
24 court’s discretion, Walker v. Am. Home Shield Long Term Disability Plan, 180 F.3d 1065, 1071
25 (9th Cir. 1999), and may be appropriate when “scientific, technical, or other specialized
26 knowledge will assist the trier-of-fact to understand the evidence or decide a fact in issue,”
27 Ledford v. Sullivan, 105 F.3d 354, 358-59 (7th Cir. 1997). However, the statute authorizing
28 plaintiff’s *in forma pauperis* status does not authorize the expenditure of public funds for expert

1 witnesses. See 28 U.S.C. § 1915; Tedder v. Odel, 890 F.2d 210, 211-12 (9th Cir. 1989) (per
2 curiam) (expenditure of public funds on behalf of indigent litigant is proper only when authorized
3 by Congress); Boring v. Kozakiewicz, 833 F.2d 468, 474 (3d Cir. 1987) (no provision to pay fees
4 for expert witnesses). The federal courts have uniformly held that an indigent prisoner litigant
5 must bear his own costs of litigation, including witnesses. Tedder, 890 F.2d at 211 (in forma
6 pauperis statute, 28 U.S.C. § 1915, does not authorize waiver of fees or expenses for an indigent's
7 witnesses).

8 In this case, it appears that plaintiff is seeking to have the court appoint an expert witness
9 to advocate on his behalf, which is not authorized by Rule 706. However, even if plaintiff is truly
10 seeking a neutral expert, the court does not find that the issues in this case are complicated such
11 that the testimony of a neutral expert would be warranted and the request is denied. To the extent
12 the expenses of an expert retained on behalf of a prisoner litigant may be recovered if
13 preauthorized and arranged by counsel appointed by this court's Pro Bono Panel, as determined
14 above, plaintiff has not demonstrated extraordinary circumstances to warrant appointment of
15 counsel. Moreover, plaintiff's request for an expert to testify regarding unspecified issues does
16 not constitute exceptional circumstances warranting appointment of counsel. The court will
17 therefore decline to appoint counsel for the purpose of obtaining an expert witness.

18 Finally, it appears that plaintiff may be seeking to request discovery or attempting to move
19 to compel discovery related to his medical and C-File from July 18, 2013, to the present. ECF
20 No. 110. If plaintiff is attempting to make a request for discovery, discovery requests are to be
21 served on counsel for defendant and were due by January 5, 2017. ECF No. 78. If plaintiff is
22 trying to compel discovery responses, then he must file a motion in the proper form. In other
23 words, he must file a motion to compel that tells the court which discovery request he wants an
24 answer to and why the answer the defendant gave was not good enough. The current deadline for
25 filing motions to compel is March 6, 2017. Id. Because it appears that plaintiff may be
26 attempting to file a motion to compel, the court will sua sponte extend the deadline for filing
27 motions to compel.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motions for appointment of counsel (ECF Nos. 104, 108, 110) are denied.
2. Plaintiff's motions to amend the complaint (ECF Nos. 107, 109) are denied.
3. Plaintiff's motion to appoint an expert witness (ECF No. 110) is denied.
4. The deadline for filing motions to compel is extended by fourteen days. Motions to compel shall be filed by March 20, 2017.

DATED: March 1, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE