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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD TRUSCHKE, Jr.,
Plaintiff,
v.
JOHN ZUFALL, et al.,
Defendants.

No. 2:15-cv-0701 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel on the grounds that he is indigent, incarcerated, and unversed in the law. He also asserts that appointment is proper because he has limited access to the law library, he has memory problems due to psychiatric medications, and he is mentally ill.

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,

1 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
2 common to most prisoners, such as indigence, lack of legal education and limited law library
3 access, do not establish exceptional circumstances that would warrant a request for voluntary
4 assistance of counsel.

5 Additionally, the mere fact that plaintiff is mentally ill or suffers from some memory
6 problems is insufficient to warrant appointment of counsel. Plaintiff must also establish that these
7 problems prevent him from understanding and responding to the court's orders. See Allen v.
8 Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005). Plaintiff has not met this requirement. Instead, he
9 states only that he is a member of the Enhanced Outpatient Program and that he has suffered
10 "mental and spiritual damage" as a result of his continued incarceration. Pl.'s Decl. in Supp. Mot.
11 Appt. Counsel ("MAC") ¶¶ 7-8, ECF No. 36. Plaintiff has submitted evidence of his mental
12 illness, Psychotic Disorder NOS, but there is no nexus between it and his ability to articulate his
13 claims. An April 30, 2015, medical note indicate that "[i]f placed on antipsychotic medication
14 [plaintiff's] delusions and hallucinations would resolve." MAC Attach., ECF No. 36 at 19.
15 Medical records dated March 17, 2016, indicate that plaintiff is involuntarily administered
16 psychotropic medication because he is a danger to himself and to others. Id. at 25. With this
17 medication, plaintiff "has engaged in fewer danger to self and danger to other behaviors and his
18 hygiene has improved." Id. at 24.

19 There is no evidence that plaintiff's mental impairments impede his ability to litigate this
20 case. Indeed, plaintiff's recent motions, which include the instant motion for appointment of
21 counsel and a motion for preliminary injunction, demonstrate an understanding of relevant legal
22 issues and cite to appropriate legal authority, and his legal arguments are presented in an
23 articulate manner. Since plaintiff has not shown that the interests of justice or exceptional
24 circumstances warrant appointment of counsel, his motion will be denied.

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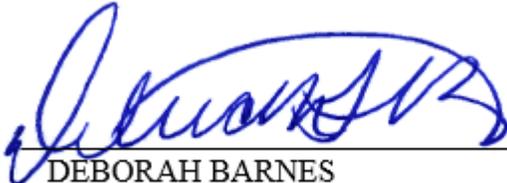
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Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of counsel (ECF No. 36) is DENIED without prejudice.

Dated: October 13, 2016



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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