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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID D. HARRIS,
Plaintiff,
v.
N. KENNEDY, et al.,
Defendants.

No. 2:16-cv-0588 MCE DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action under 42 U.S.C. § 1983. Plaintiff alleges defendants failed to provide him timely medical treatment in violation of the Eighth Amendment. Two items are before the court. First, plaintiff seeks the appointment of counsel. Second, defendants move to strike plaintiff’s January 11, 2018 filing. For the reasons set forth below, the court will deny both motions.

MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff seeks the appointment of counsel on the grounds that he is inexperienced in the law, has only a sixth grade education, is indigent, and will have difficulty gathering evidence because he is incarcerated. (ECF No. 62.) 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

1 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
2 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

3 The test for exceptional circumstances requires the court to evaluate the plaintiff's
4 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
5 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
6 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
7 common to most prisoners, such as lack of legal education and limited law library access, do not
8 establish exceptional circumstances that would warrant a request for voluntary assistance of
9 counsel. In the present case, the court does not find the required exceptional circumstances.

10 MOTION TO STRIKE


11 Defendants move to strike plaintiff's January 11, 2018 filing. (ECF No. 63.) Plaintiff
12 filed a document on January 11, 2018 entitled "Memorandum & Points of Authorities and
13 Demand for Jury Trial." (ECF No. 60.) The Clerk who docketed the document labeled it a "First
14 Amended Complaint. However, it does not appear to be an attempt to amend the complaint.
15 Rather, it is a list of legal authorities for various points, including the nature of habeas corpus and
16 the legal bases for damage claims. This court finds that plaintiff appears to be attempting to
17 submit a legal brief, which, because it does not appear to relate to any pending matters, shall be
18 disregarded. Because defendants' motion to strike is based on the characterization of the January
19 11 filing as an amended complaint, defendants' motion will be denied as moot.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff's February 1, 2018 motion for appointment of counsel (ECF No. 62) is
22 denied; and
- 23 2. Defendants' February 2, 2018 motion to strike (ECF No. 63) is denied as moot.

24 Dated: February 12, 2018

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26 DLB:9
27 DB/prisoner-civil rights/harr0588.mts

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE