UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RAY DEERE, Sr., Plaintiff, v. JOE LIZARRAGA, Defendant.	No. 2:16-cv-1694 DB P ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel and delay of his scheduled deposition. (ECF No. 31.) Plaintiff states that he is inexperienced in the law and does not know how to prepare for the deposition.

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, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances

common to most prisoners, such as lack of legal education, do not 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.

Because plaintiff's request for a delay of his deposition is based only on his wish for the appointment of counsel, that request will be denied as well.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of counsel and for a delay of his deposition (ECF No. 31) is denied without prejudice.

Dated: June 14, 2018

DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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