

1 litigation reaches that stage. At this stage of the litigation, defendant has not yet made an
2 appearance, and therefore it is premature for plaintiff to be demanding documents from
3 defendant, or otherwise conducting discovery. See Fed. R. Civ. P. 26(a)(1) (initial disclosures
4 and timing), (f) (discovery conference and timing). In addition, the time for the parties to submit
5 evidence and trial exhibits to the court, and the manner for doing so, are set forth in the Federal
6 Rules of Civil Procedure, the Local Rules of this Court, and in a future “Final Pretrial Order,”
7 should the case proceed to that stage. Discovery materials are not routinely filed with the court
8 nor submitted to the Clerk of the Court. See Local Rules 250.1-250.5 (discovery materials not to
9 be filed except as prescribed by the Local Rules).

10 The Clerk of the Court will therefore be instructed to return the medical records to the
11 office which provided them. If this case reaches the discovery stage, and the Sacramento County
12 Sheriff’s Office refuses plaintiff’s request for medical records which plaintiff needs to prosecute
13 this case, plaintiff can file an appropriate motion to compel production of the records to him.

14 II. MOTION FOR APPOINTMENT OF ATTORNEY

15 Plaintiff has moved for appointment of counsel to represent him. ECF No. 11. District
16 courts may not require counsel to represent indigent litigants in § 1983 cases. Mallard v. United
17 States Dist. Court, 490 U.S. 296, 298 (1989). However, where willing counsel is available, the
18 district court “may request an attorney to represent any person unable to afford counsel.” 28
19 U.S.C. § 1915(e)(1); Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir.
20 2004), cert. denied, 545 U.S. 1128 (2005).

21 The district court may appoint such counsel where “exceptional circumstances” exist.
22 Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009), cert. denied, 559 U.S. 906 (2010) (citing
23 Agyeman, 390 F.3d at 1103). In determining whether or not exceptional circumstances exist, “a
24 court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner
25 to articulate his claims pro se in light of the complexity of the legal issues involved.’” Palmer,
26 560 F.3d at 970 (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). Circumstances
27 common to most pro se litigants, such as lack of formal legal education, do not establish
28 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

