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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 WILLIAM HOUSTON,

12 Plaintiff,

13 v.

14 L. ELDRIDGE, et al.,

15 Defendants.
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No. 2:16-cv-2561 WBS KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C.
18 § 1983. Plaintiff requests that the court appoint attorney Regina Jones as “co-counsel” to assist
19 plaintiff. The court does not appoint “co-counsel” to represent indigent prisoners.

20 Construing plaintiff’s motion as a request for appointment of counsel, district courts lack
21 authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v.
22 United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may
23 request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell
24 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
25 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must
26 consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to
27 articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.
28 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to

1 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
2 Circumstances common to most prisoners, such as lack of legal education and limited law library
3 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
4 of counsel.

5 Having considered the factors under Palmer, the court finds that plaintiff has failed to
6 meet his burden of demonstrating exceptional circumstances warranting the appointment of
7 counsel at this time.

8 Plaintiff has also filed a motion requesting permission to depose defendants by written
9 questions. The procedures for convening depositions by written question are as follows:

10 Rule 30 of the Federal Rules of Civil Procedure governs the
11 procedure by which depositions are taken by oral examination. “A
12 party who wants to depose a person by oral questions must give
13 reasonable written notice to every other party.” Fed.R.Civ.P.
14 30(b)(1). “The party who notices the deposition must state in the
15 notice the method for recording the testimony.” Fed.R.Civ.P.
16 30(b)(3)(A). The noticing party must also bear costs of recording
the deposition. Id. In addition, that party must arrange for an officer
to conduct the depositions (absent a stipulation by all parties
otherwise). Fed.R.Civ.P. 30(b)(5)(A). The court cannot order
defendants to arrange for plaintiff to take their depositions. On the
other hand, plaintiff does not require the court’s permission to take
defendants’ depositions.

17 Depositions by written questions must be taken pursuant to the
18 procedures set forth under Fed.R.Civ.P. 31. The procedure would
19 involve plaintiff sending out a notice of deposition identifying “(a)
20 the deponent (i.e., the witness), (b) the officer taking the deposition,
21 (c) a list of the exact questions to be asked of the witness, and (d)
22 the date and time for the deposition to occur.” Lopez v. Horel, 2007
23 WL 2177460 n. 1 (N.D.Cal. July 27, 2007) *aff’d*, 367 Fed. Appx.
24 810 (9th Cir. 2010). There would then be an opportunity for the
parties to exchange written cross-examination questions for the
witness, followed by written re-direct questions, and then written
re-cross-examination questions. Id. The questions would then be
sent to the deposition officer who would depose the witness with
the scripted questions. Id. As for an oral deposition, the responses
are reported and the transcript prepared by a court reporter. Id.

25 “To obtain a deposition upon written questions, the prisoner thus
26 has to pay the ... deposition officer fee, court reporter fee, and the
27 cost of a transcript of the proceedings.” Id. In any event, to obtain
either an oral or written question deposition, plaintiff must follow
the applicable rule. Leave of court is unnecessary and the motion is
denied on that basis.

28 Pitts v. Davis, 2014 WL 29723, *9–10 (E.D.Cal. Jan.3, 2014) (fn.omitted).


1 Moreover, “[p]laintiff’s in forma pauperis status ... does not entitle him to waiver of
2 witness fees, mileage or deposition officer fees.” Id. at * 10 n. 2 (citations and internal quotation
3 marks omitted).

4 Plaintiff’s motion to depose defendants by written questions is denied because he has not
5 followed the procedures set forth above. Plaintiff has also made no showing that he can pay the
6 related fees.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff’s motion for the appointment of counsel (ECF No. 34) is denied without
9 prejudice;
10 2. Plaintiff’s motion to conduct depositions by written questions (ECF No. 35) is denied.

11 Dated: September 26, 2017

12 
13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE

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