

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL GARCES,

Plaintiff,

v.

J. PICKETT, et al.,

Defendants.

No. 2:17-cv-0319 JAM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel. ECF No. 116. Plaintiff previously filed motions to appoint counsel on February 10, 2017, ECF No. 3; September 26, 2017, ECF No. 20; January 11, 2019, ECF No. 39; and June 14, 2019, ECF No. 83. Each motion was denied. See ECF Nos. 9, 21, 44, & 84.

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). In his present

1 request, plaintiff states that he cannot afford counsel, his imprisonment will limit his ability to
2 litigate, he has limited access to the law library, and his attempts to secure private counsel have
3 been unsuccessful. See ECF No. 116 at 1-2. Circumstances common to most prisoners, such as
4 lack of legal education and limited law library access, do not establish exceptional circumstances
5 that would warrant a request for voluntary assistance of counsel.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
7 counsel, ECF No. 116, is denied.

8 DATED: July 20, 2020

9 
10 ALLISON CLAIRE
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28