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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 PABLO P. PINA,

No. C 07-4989 SI (pr)

9 Plaintiff,

**ORDER OF SERVICE AND PARTIAL  
DISMISSAL**

10 v.

11 JAMES TILTON, Director/Secretary;  
12 et al.,

13 Defendants.  
14

**INTRODUCTION**

15 Pablo P. Pina, an inmate at Pelican Bay State Prison, filed this civil rights action under  
16 42 U.S.C. § 1983. Although there originally were three plaintiffs, the court dismissed Pina's  
17 two co-plaintiffs from the action and ordered Pina to file an amended complaint. His first  
18 amended complaint is now before the court for review under 28 U.S.C. § 1915A. His motion  
19 for appointment of counsel and request for production of documents also are before the court.  
20

21 **BACKGROUND**

22 The first amended complaint is separated into five causes of action and alleges the  
23 following:  
24

25 Gang Inactivity Review: The first cause of action concerns prison officials' refusal to  
26 release Pina from the security housing unit ("SHU") as an inactive gang affiliate. First Amended  
27 Complaint ("FAC"), ¶¶ 1-84. Pina currently is in administrative segregation ("ad-seg") in the  
28 SHU at Pelican Bay based on his validation as an active member of the Nuestra Familia prison

1 gang. He has been in the SHU at various prisons apparently continuously since his most recent  
2 arrival in the CDCR in 1986. His first several years in the SHU were spent serving time on a  
3 SHU term left over from an earlier incarceration. In 1993, he was informed that he had  
4 completed the determinate SHU term but would be retained in the SHU on an indeterminate  
5 basis due to his gang affiliation. He does not complain about his initial placement, or any  
6 particular periodic review of that placement, but instead about an inactive status review. He  
7 concedes that he was active in a gang in the past, see, e.g., FAC, ¶¶ 38, 58, 62, but denies that  
8 he continues to be associated with it.

9 In September 2004, Pina had an inactive status review to determine whether he was  
10 inactive in the gang and could be released from ad-seg. He was denied inactive status. In  
11 connection with that review, he received two CDC-1030 confidential information disclosure  
12 forms that indicated confidential information from 2001 showed his continued affiliation with  
13 the Nuestra Familia gang. Pina told the hearing officers at the review that he was no longer  
14 associated with his former gang. When the hearing officers mentioned that he was on a lot of  
15 gang hit lists, Pina told the officers he knew that his gang history and gang assaults meant that  
16 he would have enemies but asserted that the existence of enemies should not matter in  
17 determining whether he could be released from the SHU. He was denied inactive status. In  
18 addition to complaining about the decision denying him inactive status, he complains about the  
19 adequacy of the review of that decision and the quality of the information on which the decision-  
20 makers relied.

21 Pina and other gang affiliates were moved from their SHU cells to other SHU cells that  
22 were on a short corridor. This allegedly isolated the inmates in the short-corridor housing units  
23 from other SHU inmates. Pina was not asked if he wanted to be put there before being moved  
24 there.

25 Legal Mail: The second cause of action concerns prison staff opening mail that Pina  
26 claims was legal mail. FAC ¶¶ 85-109. Defendant Parker opened mail from attorney Tony  
27 Serra. Defendants Depew and Carrier opened mail from the ACLU and from attorney Gloria  
28 Allred. Other mail from public officials has been opened outside his presence. He has filed

1 inmate appeals about the opening of his mail and various defendants have denied those appeals.

2 C/O McCovey: The third cause of action is rather unusual and concerns a personnel  
3 problem at the prison that tangentially involved Pina. FAC, ¶¶ 110-196. After Pina arrived in  
4 the short corridor cell in January 2006, he was able to hear what was being said in the control  
5 booth for his housing unit. He heard correctional officer ("C/O") Parker complain to other staff  
6 members about C/O McCovey and eventually attempt to get McCovey banned from the housing  
7 unit. Apparently during the discussions between Parker and other correctional staff about  
8 McCovey, Pina's name was mentioned in the discussions although Pina does not know or explain  
9 what the correctional staff was saying about him. Eventually, McCovey was restricted from  
10 entering the housing unit. Pina thought that being connected to the problem with McCovey  
11 would adversely affect the inactive gang review that would be done for him. He complained  
12 about his concerns and asked for copies of any report about him and/or McCovey that mentioned  
13 his name, but his request was not granted. Pina's allegations make it clear that he does not know  
14 that any report was ever written that mentioned him in an adverse way, or that any information  
15 about the McCovey problem has been used to his detriment – he merely speculates that there  
16 might be something in writing and he wants to see it. He claims he has a right under the  
17 regulations to have his records corrected, and that he has been denied his due process rights. He  
18 also appears to complain that McCovey was treated differently than others, and that McCovey  
19 may lose her job.

20 Inmate Appeals And Outgoing Mail: In the fourth cause of action, Pina complains that  
21 prison officials refuse to properly process his inmate appeals. FAC, ¶¶ 197-209. He also alleges  
22 that associate warden Scavedra implemented a procedure that all outgoing mail from the SHU  
23 would be marked with a large red stamp that reflected that the mail originated in the SHU.

24 SHU Conditions: In the fifth cause of action, Pina complains about the general conditions  
25 in the SHU. FAC, ¶¶ 210-223. He alleges that he and other SHU inmates are subjected to many  
26 harsh conditions that do not exist in the general population. SHU inmates allegedly are not  
27 allowed the same property and canteen privileges as in the general population, are not allowed  
28 contact visits (but instead must visit in a plexiglass booth and talk to visitors by telephone), are

1 not allowed telephone calls except when there is a death in the immediate family, are given food  
2 that is already made and always has water in it, are kept in cells 23 hours per day, experience  
3 delays in the processing of mail, and are not allowed to take photographs.

## 4 5 **DISCUSSION**

### 6 A. Review of First Amended Complaint

7 A federal court must engage in a preliminary screening of any case in which a prisoner  
8 seeks redress from a governmental entity or officer or employee of a governmental entity. See  
9 28 U.S.C. §1915A(a). The court must identify any cognizable claims, and dismiss any claims  
10 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
11 monetary relief from a defendant who is immune from such relief. See 28 U.S.C.  
12 §1915A(b)(1),(2).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that  
14 a right secured by the Constitution or laws of the United States was violated, and (2) that the  
15 violation was committed by a person acting under the color of state law. See West v. Atkins,  
16 487 U.S. 42, 48 (1988).

#### 17 18 1. Discretionary Release From The SHU

19 Interests that are procedurally protected by the Due Process Clause may arise from two  
20 sources--the Due Process Clause itself and laws of the states. See Meachum v. Fano, 427 U.S.  
21 215, 223-27 (1976). In the prison context, these interests are generally ones pertaining to liberty.  
22 Changes in conditions so severe as to affect the sentence imposed in an unexpected manner  
23 implicate the Due Process Clause itself, whether or not they are authorized by state law. See  
24 Sandin v. Conner, 515 U.S. 472, 484 (1995) (citing Vitek v. Jones, 445 U.S. 480, 493 (1980)  
25 (transfer to mental hospital), and Washington v. Harper, 494 U.S. 210, 221-22 (1990)  
26 (involuntary administration of psychotropic drugs)). Plaintiff's is not a case involving changes  
27 so severe as to implicate the Due Process Clause itself.

28 Deprivations that are less severe or more closely related to the expected terms of

1 confinement may also amount to deprivations of a procedurally protected liberty interest,  
2 provided that state statutes or regulations narrowly restrict the power of prison officials to  
3 impose the deprivation and that the liberty in question is one of "real substance." See id. at 477-  
4 87. A state most commonly restricts the power of prison officials by a two-step process: (1)  
5 establishing "substantive predicates" to govern official decisionmaking, i.e., "particularized  
6 standards or criteria to guide the [s]tate's decisionmakers," and then (2) requiring, "in explicitly  
7 mandatory language," that if the substantive predicates are met, a particular outcome must  
8 follow. See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 461-64 (1989). An  
9 interest of "real substance" will generally be limited to freedom from restraint that imposes  
10 "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison  
11 life" or "will inevitably affect the duration of [a] sentence," Sandin, 515 U.S. at 484, 487.

12       There is some uncertainty as to whether Sandin has eliminated the requirement that state  
13 law narrowly restrict the power of prison officials to impose the deprivation and instead requires  
14 only that there be an interest of real substance to determine that an inmate has a right to due  
15 process before being deprived of that interest. In Sandin, the Court criticized earlier decisions  
16 that focused on the language of the regulations rather than the nature of the interest because they  
17 "encouraged prisoners to comb regulations in search of mandatory language on which to base  
18 entitlements to various state-conferred privileges." Sandin, 515 U.S. at 481. The language-  
19 based approach in which courts and prisoners searched for negative implication from mandatory  
20 language in prisoner regulations had "strayed from the real concerns undergirding the liberty  
21 protected by the Due Process Clause." Id. at 483. The Court reiterated that states "may under  
22 certain circumstances create liberty interests which are protected by the Due Process Clause. .  
23 . . But these interests will be generally limited to freedom from restraint which, while not  
24 exceeding the sentence in such an unexpected manner as to give rise to protection by the Due  
25 Process Clause of its own force. . . nonetheless imposes atypical and significant hardship on the  
26 inmate in relation to the ordinary incidents of prison life." Id. at 484. See Jackson v. Carey, 353  
27 F.3d 750, 755 (9th Cir. 2003) ("focus of the liberty interest inquiry is whether the challenged  
28 condition imposes an atypical and significant hardship"); Duffy v. Riveland, 98 F.3d 447, 457

1 (9th Cir. 1996) (implying that Sandin reformulated working definition of liberty interest to  
2 include only "real substance" prong).

3 While there may be some uncertainty as to whether the court needs to find mandatory  
4 language creating the liberty interest, there is no uncertainty at all that an atypical and significant  
5 hardship must exist to find that a liberty interest is protected by the Due Process Clause. Sandin  
6 made clear the need for an atypical and significant hardship and the Supreme Court recently  
7 reiterated its adherence to Sandin's rule in Wilkinson v. Austin, 545 U.S. 209, 222-24 (2005).  
8 Whether the due process analysis after Sandin has two prongs – i.e., (1) an atypical and  
9 significant hardship and (2) a state-created interest due to mandatory language – or just one  
10 prong, it is beyond dispute that at least the first prong is required.

11 The liberty interest in not being subjected to the harsh conditions of the Pelican Bay SHU  
12 on an indefinite basis is not at issue in this claim, nor is the due process requirement that inmates  
13 so confined receive periodic review of their SHU placement.<sup>1</sup> Rather, the claim pertains to the  
14 review of Pina's case for his possible release from the SHU as an inactive gang affiliate.

15 Pina did not have a protected liberty interest in having prison officials comply with the  
16 state regulations regarding inactive gang affiliates, regardless of the existence of the periodic  
17 reviews by the ICC. Where, as here, the conditions of confinement did not change at all -- Pina  
18 was in the SHU before, during and after defendants' activities -- there was no imposition of a  
19 restraint that imposed an atypical and significant hardship on the inmate in relation to the  
20 ordinary incidents of prison life.<sup>2</sup> His claim fails on the first prong of Sandin because he was  
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22 <sup>1</sup>Existing case law explains that due process requires some sort of periodic review of the  
23 inmate's confinement in the SHU that is more than a meaningless gesture. See Hewitt v. Helms,  
24 459 U.S. 460, 477 n.9 (1983); Toussaint v. McCarthy, 801 F.2d 1080, 1101-02 (9th Cir. 1986).  
25 The periodic reviews of SHU placement occur regardless of whether an inmate is under  
26 consideration for release as an inactive gang affiliate. The periodic reviews are done by the ICC,  
27 rather than the DRB. See 15 Cal. Code Regs. § 3341.5(c)(2)(A). The DRB's activities are not  
the periodic review required for inmates placed in the SHU indefinitely. To the extent there was  
a liberty interest in not being kept in the SHU as a prison gang affiliate without procedural  
protections, Pina was not denied that liberty interest as he did receive the periodic review  
required under Hewitt and Toussaint.

28 <sup>2</sup>There also was no inevitable effect on the duration of Pina's confinement because he was in  
custody on an indeterminate life sentence.

1 not deprived of an interest of real substance.

2       If the due process analysis has two prongs after Sandin, Pina's claim would fail also on  
3 the second prong because he has misread the applicable regulations and ignored their  
4 discretionary nature. The regulations permit, but do not require, the review of the active/inactive  
5 status of an inmate and permit, but do not require, the release from the SHU of an inmate  
6 determined to be an inactive gang member or associate. "As provided at section 3378(e), the  
7 Departmental Review Board (DRB) may authorize SHU release for prison gang members or  
8 associates categorized as inactive. The term inactive means that the inmate has not been  
9 involved in gang activity for a minimum of six (6) years. . . . The DRB is authorized to retain  
10 an inactive gang member or associate in a SHU based on the inmate's past or present level of  
11 influence in the gang, history of misconduct, history of criminal activity, or other factors  
12 indicating that the inmate poses a threat to other inmates or institutional security." 15 Cal. Code  
13 Regs. § 3341.5(c)(5) (emphasis added). Section 3378(e), in turn, provides: "An inmate housed  
14 in a security housing unit (SHU) as a gang member or associate may be considered for review  
15 of inactive status by the Department Review Board when the inmate has not been identified as  
16 having been involved in gang activity for a minimum of six (6) years." Section 3341.5 does not  
17 establish substantive predicates and does not require in explicitly mandatory language that if  
18 certain substantive predicates were met, a particular outcome must follow. See Kentucky Dep't  
19 of Corrections v. Thompson, 490 U.S. at 461-64. The regulation's permissive language gave  
20 Pina no constitutionally protected right to a review of his file or right to release from the SHU  
21 based on his gang inactivity. Section 3341.5(c)(5) allows the retention in the SHU of even an  
22 inactive gang member or associate. The regulation is discretionary, not mandatory, and therefore  
23 does not create a protected liberty interest and cannot be the basis for a federal due process  
24 claim. This means that Pina's claim would fail on the second prong of the due process analysis,  
25 if that prong still exists after Sandin.

1           2.       Opening Of Legal Mail

2           Prison officials may institute procedures for inspecting "legal mail," e.g., mail sent  
3 between attorneys and prisoners, see Wolff v. McDonnell, 418 U.S. 539, 576-77 (1974)  
4 (incoming mail from attorneys). However, the opening and inspecting of legal mail outside the  
5 presence of the prisoner may have an impermissible "chilling" effect on the constitutional right  
6 to petition the government, see O'Keefe v. Van Boening, 82 F.3d 322, 325 (9th Cir. 1996), and  
7 should not be read or copied without the prisoner's permission. See Casey v. Lewis, 43 F.3d  
8 1261, 1269 (9th Cir. 1994), rev'd on other grounds, 518 U.S. 343 (1996). Prison officials must  
9 establish that legitimate penological interests justify the policy or practice. See O'Keefe, 82 F.3d  
10 at 327.

11           Liberally construed, the first amended complaint states a claim for relief against  
12 defendants Parker, Depew and Carrier for interference with Pina's First Amendment rights based  
13 on their opening and reading of his legal mail. For the reasons discussed in Section 4, below,  
14 the other defendants mentioned in this claim who handled Pina's inmate appeals do not have  
15 liability for their handling of his inmate appeals for the already-completed mail confiscation.

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17           3.       The McCovey Problem

18           The lengthy section of the first amended complaint concerning the personnel problem for  
19 C/O McCovey that only tangentially involves Pina does not state a claim upon which relief may  
20 be granted under § 1983. Pina has no standing to complain of violations of the correctional  
21 officer's rights. And Pina had no federally protected right of his own in this incident. Pina had  
22 no federal due process right to see records that may have mentioned his name, and no federal due  
23 process right to have the records corrected if he discovered something false about him in the  
24 records. As explained in Section 1, above, there must be (1) an atypical and significant hardship  
25 and (2) a state-created interest due to mandatory language for there to be a liberty interest  
26 protected by the Due Process Clause. Here, at least the first prong was completely missing, as  
27 Pina did not suffer any hardship, let alone an atypical and significant hardship, as a result of any  
28 mention about him in any records pertaining to C/O McCovey's personnel problem.

1           4.     Inmate Appeals

2           The failure to grant an inmate's appeal in the prison administrative appeal system does  
3 not amount to a due process violation. There is no federal constitutional right to a prison  
4 administrative appeal or grievance system for California inmates. See Mann v. Adams, 855 F.2d  
5 639, 640 (9th Cir. 1988); Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996). The denial  
6 of an inmate appeal is not so severe a change in condition as to implicate the Due Process Clause  
7 itself and the State of California has not created a protected interest in an administrative appeal  
8 system in its prison. California Code of Regulations, title 15 sections 1073 and 3084.1 grant  
9 prisoners a purely procedural right: the right to have a prison appeal. The regulations simply  
10 require the establishment of a procedural structure for reviewing prisoner complaints and set  
11 forth no substantive standards; instead, they provide for flexible appeal time limits, see Cal.  
12 Code Regs. tit. 15, § 3084.6, and, at most, that "no reprisal shall be taken against an inmate or  
13 parolee for filing an appeal," id. § 3084.1(d). A provision that merely provides procedural  
14 requirements, even if mandatory, cannot form the basis of a constitutionally cognizable liberty  
15 interest. See Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993); see also Antonelli, 81 F.3d  
16 at 1430 (prison grievance procedure is procedural right that does not give rise to protected  
17 liberty interest requiring procedural protections of Due Process Clause).

18           Pina had no federal constitutional right to a properly functioning appeal system. An  
19 incorrect decision on an administrative appeal or failure to process the appeal in a particular way  
20 therefore did not amount to a violation of his right to due process. The claims concerning the  
21 handling of the administrative appeals are dismissed for failure to state a claim upon which relief  
22 may be granted. To the extent he suggests that the failure to process an appeal may interfere  
23 with a right of access to the courts, no claim upon which relief may be granted is stated because  
24 no actual injury has occurred. See Lewis v. Casey, 518 U.S. 343, 350-51 (1996).

25  
26           5.     Marking Of Outgoing Mail

27           Prisoners enjoy a First Amendment right to send and receive mail. Witherow v. Paff, 52  
28 F.3d 264, 265 (9th Cir. 1995) (citing Thornburgh v. Abbott, 490 U.S. 401, 407 (1989)). A

1 prison may adopt regulations or practices which impinge on a prisoner's First Amendment right  
2 to send mail if those restrictions further "an important or substantial governmental interest  
3 unrelated to the suppression of expression" and the limitations on the First Amendment  
4 freedoms are no greater than necessary to protect that interest. See Barrett v. Belleque, No. 06-  
5 35667, slip op. 13347, 13350 (9th Cir. Sept. 22, 2008) (quoting Procunier v. Martinez, 416 U.S.  
6 396, 413 (1974), overruled on other grounds by Thornburgh v. Abbott, 490 U.S. 401, 413-14  
7 (1989)).

8 Pina claims that the policy of stamping of outgoing mail to reflect that it came from the  
9 SHU violates his First Amendment right to free speech. Liberally construed, the first amended  
10 complaint states a claim for relief against defendant Scavetta, the associate warden who authored  
11 the policy of which Pina complains.

12  
13 6. SHU Hardships

14 Pina asserts that the overall conditions of the SHU violate his Eighth Amendment rights.  
15 The claim cannot proceed. Pina, as an inmate in the SHU, is a member of plaintiff class in the  
16 Madrid v. Gomez class action litigation concerning the SHU conditions. Judge Henderson in  
17 that case has ruled that the overall conditions of the SHU do not violate the Eighth Amendment  
18 for the non-mentally ill inmates therein. See Madrid v. Gomez, 889 F.Supp. 1146, 1227-30,  
19 1260-65 (N.D. Cal. 1995). Pina may not relitigate the claim individually.

20  
21 B. Miscellaneous Motions

22 Plaintiff filed a second motion for appointment of counsel to represent him in this action.  
23 A district court has discretion under 28 U.S.C. § 1915(e)(1) to designate counsel to represent an  
24 indigent civil litigant in exceptional circumstances. See Wilborn v. Escalderon, 789 F.2d 1328,  
25 1331 (9th Cir. 1986). This requires evaluation of both the likelihood of success on the merits  
26 and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal  
27 issues involved. See id. Neither of these factor is dispositive and both must be viewed together  
28 before deciding on a request for counsel under section 1915(e)(1). The motion is DENIED with

1 prejudice. Now that the viable claims have been identified, it is clear that they do not present  
2 legally complex issues. It also appears that the likelihood of success on the claims is low:  
3 although interference with mail claims can be pled with relative ease, it is highly unlikely that  
4 the prison officials will be unable to show the necessary penological interests to withstand both  
5 challenges, even for the outgoing mail where the standard is higher.

6 Plaintiff filed a request for production of documents. The request will be dismissed as  
7 improperly filed. Discovery requests and responses are not to be filed with the court in general.  
8 Discovery requests and responses should be exchanged between the parties without court  
9 oversight unless and until a problem arises which the parties are unable to resolve among  
10 themselves.

## 11 CONCLUSION

12 For the foregoing reasons,

13 1. The first amended complaint states a claim for relief under 42 U.S.C. § 1983  
14 against defendants Parker, Depew and Carrier for a First Amendment violation based on opening  
15 Pina's legal mail and against defendant Scavetta for a First Amendment violation based on her  
16 authorizing the policy of stamping outgoing mail to indicate its origin. All other defendants and  
17 claims are dismissed.

18 2. The clerk shall issue a summons and the United States Marshal shall serve, without  
19 prepayment of fees, the summons, a copy of the first amended complaint and a copy of all the  
20 documents in the case file upon four defendants, all of whom allegedly work at Pelican Bay  
21 State Prison: (1) correctional officer I. Parker, (2) mail room supervisor P. Carrier, (3) mail room  
22 supervisor D. Depew, and (4) associate warden Cynthia Scavetta.

23 3. In order to expedite the resolution of this case, the following briefing schedule for  
24 dispositive motions is set:

25 a. No later than **December 19, 2008**, defendants must file and serve a motion  
26 for summary judgment or other dispositive motion. If defendants are of the opinion that this case  
27 cannot be resolved by summary judgment, they must so inform the court prior to the date the  
28

1 motion is due.

2           b. Plaintiff's opposition to the summary judgment or other dispositive motion  
3 must be filed with the court and served upon defendants no later than **January 30, 2009**.  
4 Plaintiff must bear in mind the following notice and warning regarding summary judgment as  
5 he prepares his opposition to any summary judgment motion:

6           The defendants may make a motion for summary judgment by which they  
7 seek to have your case dismissed. A motion for summary judgment under Rule  
8 56 of the Federal Rules of Civil Procedure will, if granted, end your case. [¶]  
9 Rule 56 tells you what you must do in order to oppose a motion for summary  
10 judgment. Generally, summary judgment must be granted when there is no  
11 genuine issue of material fact -- that is, if there is no real dispute about any fact  
12 that would affect the result of your case, the party who asked for summary  
13 judgment is entitled to judgment as a matter of law, which will end your case.  
14 When a party you are suing makes a motion for summary judgment that is  
15 properly supported by declarations (or other sworn testimony), you cannot simply  
16 rely on what your complaint says. Instead, you must set out specific facts in  
17 declarations, depositions, answers to interrogatories, or authenticated documents,  
18 as provided in Rule 56(e), that contradict the facts shown in the defendants'  
19 declarations and documents and show that there is a genuine issue of material fact  
20 for trial. If you do not submit your own evidence in opposition, summary  
21 judgment, if appropriate, may be entered against you. If summary judgment is  
22 granted, your case will be dismissed and there will be no trial. (See Rand v.  
23 Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

24           c. If defendants wish to file a reply brief, the reply brief must be filed and  
25 served no later than **February 20, 2009**.

26           4. All communications by plaintiff with the court must be served on a defendant's  
27 counsel by mailing a true copy of the document to defendant's counsel. The court may disregard  
28 any document which a party files but fails to send a copy of to his opponent. Until a defendant's  
counsel has been designated, plaintiff may mail a true copy of the document directly to  
defendant, but once a defendant is represented by counsel, all documents must be mailed to  
counsel rather than directly to that defendant.

          5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is  
required before the parties may conduct discovery.

          6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
court informed of any change of address and must comply with the court's orders in a timely

1 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
2 pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of  
3 address in every pending case every time he is moved to a new facility.

4 7. Plaintiff is cautioned that he must include the case name and case number for this  
5 case on any document he submits to this court for consideration in this case.

6 8. Plaintiff's motion for appointment of counsel is DENIED. (Docket # 16.)

7 9. Plaintiff's request for production of documents is DISMISSED as improperly filed.  
8 (Docket # 17.)

9 IT IS SO ORDERED.

10 Dated: October 28, 2008

  
\_\_\_\_\_  
SUSAN ILLSTON  
United States District Judge