

1 prior to his placement in the BMU, and defendants were unaware that plaintiff had not
2 received prior notice of the hearing; (4) upon defendants' learning, after the hearing was
3 held, that plaintiff had not received prior notice, defendants informed plaintiff he would be
4 provided a new hearing; and (4) plaintiff waived his right to a new hearing. Additionally,
5 defendants argue that even if a constitutional violation did occur, they are entitled to
6 summary judgment on grounds of qualified immunity because at the time of defendants'
7 actions it was not clearly established that their actions violated due process or that their
8 actions were unreasonable under the circumstances. (Docket No. 10.)

9 Plaintiff has not filed opposition to defendants' motion, as he seeks to engage in
10 discovery prior to doing so. Defendants, however, have moved to stay discovery until the
11 Court has ruled on their qualified immunity argument. Plaintiff objects to defendants'
12 motion on the ground that defendants, in their motion for summary judgment, have, in
13 addition to raising a qualified immunity argument, taken the position that no constitutional
14 violation occurred; plaintiff argues he requires discovery to raise a triable issue of fact in
15 opposition thereto.

16 The defense of qualified immunity protects "government officials . . . from liability
17 for civil damages insofar as their conduct does not violate clearly established statutory or
18 constitutional rights of which a reasonable person would have known." Harlow v.
19 Fitzgerald, 457 U.S. 800, 818 (1982). A court considering a claim of qualified immunity
20 must determine (1) whether the plaintiff has alleged the deprivation of an actual
21 constitutional right, and (2) whether such right was clearly established such that it would be
22 clear to a reasonable officer that his conduct was unlawful in the situation he confronted.
23 Pearson v. Callahan, 129 S. Ct. 808, 818 (2009).

24 A ruling on the issue of qualified immunity should be made early in the proceedings
25 so that the costs and expenses of trial are avoided where the defense is dispositive. Saucier,
26 533 U.S. at 200. Qualified immunity is particularly amenable to adjudication by summary
27 judgment. Martin v. City of Oceanside, 360 F.3d 1078, 1081 (9th Cir. 2004). Further, as a
28 general rule, a district court should stay discovery until the issue of qualified immunity is

1 resolved. See Crawford-El v. Britton, 523 U.S. 574, 598 (1998).

2 Assuming, for the purposes of defendants’ motion to stay discovery, plaintiff’s right
3 to due process was violated by defendants’ actions, and in light of defendants’ argument that
4 they are entitled to qualified immunity because it would not have been clear to a reasonable
5 officer that his conduct violated plaintiff’s clearly established constitutional rights, the Court
6 finds discovery should be stayed in the instant manner until the issue of qualified immunity
7 is resolved. Accordingly, defendants’ motion to stay discovery will be granted.

8 B. Motion for Extension of Time

9 Plaintiff seeks an extension of time to file opposition to defendants’ motion for
10 summary judgment. Good cause appearing, the motion will be granted, as set forth in the
11 Conclusion section of this order.

12 C. Motion for Appointment of Counsel

13 Plaintiff moves for the appointment of counsel to represent him in the instant
14 proceedings. There is no constitutional right to counsel in a civil case such as this. See
15 Lassiter v. Dep’t of Social Services, 452 U.S. 18, 25 (1981). Rather, pursuant to 28 U.S.C.
16 § 1915, a district court has the power to “request” that counsel represent a litigant who is
17 proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). The decision to request counsel to
18 represent an indigent litigant under § 1915 is within “the sound discretion of the trial court
19 and is granted only in exceptional circumstances.” Franklin v. Murphy, 745 F.2d 1221, 1236
20 (9th Cir. 1984). A finding of “exceptional circumstances” requires an evaluation of (1) the
21 likelihood of the plaintiff’s success on the merits, and (2) the plaintiff’s ability to articulate
22 his claims pro se in light of the complexity of the legal issues involved. See Agyeman v.
23 Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004).

24 At this point in the proceedings, a determination as to plaintiff’s likelihood of success
25 would be premature; additionally, plaintiff has been able to present his claims in an
26 adequate manner. Consequently, the Court finds there are no exceptional circumstances
27 warranting appointment of counsel at this time. Should the circumstances of the case
28 materially change, the Court may reconsider plaintiff’s request sua sponte. Accordingly, the

1 motion for appointment of counsel will be denied.

2 **CONCLUSION**

3 For the reasons stated above, the Court orders as follows:

4 1. Defendants' motion to stay discovery until the matter of qualified immunity is
5 resolved is hereby GRANTED.

6 2. Plaintiff's request for an extension of time to oppose defendants' summary
7 judgment motion is hereby GRANTED.

8 Within **thirty** days of the date this order is filed, plaintiff shall file with the court and
9 serve on defendants' counsel plaintiff's opposition.


10 Defendants shall file a reply to the opposition within **fifteen** days of the date
11 defendants' counsel is served with such opposition.

12 3. Plaintiff's request for appointment of counsel is hereby DENIED.

13 This order terminates Docket Nos. 14, 15, 19, 24 and 25.

14 IT IS SO ORDERED.

15 DATED: May 5, 2011

16 
17 MAXINE M. CHESNEY
18 United States District Judge