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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 OMARR L. BURNETT,

6 Plaintiff,

7 vs.

8 DEPUTY FRAYNE, et al.,

9 Defendants.  
10

Case No: C 09-4693 SBA (pr)

**ORDER DENYING PLAINTIFF'S  
REQUEST FOR APPOINTMENT  
OF COUNSEL**

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12 Pro se plaintiff Omarr L. Burnett brings the instant action under 42 U.S.C. § 1983  
13 alleging that his constitutional rights were violated while he was housed at San Mateo  
14 County Jail (SMCJ) and San Quentin State Prison (SQSP). Plaintiff has since been  
15 released from custody.

16 Plaintiff requests that the Court appointment counsel to represent him in this action.  
17 Dkt. 92 at 2-3. “[I]t is well-established that there is generally no constitutional right to  
18 counsel in civil cases.” United States v. Sardone, 94 F.3d 1233, 1236 (9th Cir. 1996).  
19 Nonetheless, under 28 U.S.C. § 1915(e)(1), the Court has the discretion to appoint counsel  
20 to “any person unable to afford counsel.” The discretionary appointment of counsel  
21 typically is reserved for cases involving “exceptional circumstances.” Terrell v. Brewer,  
22 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an  
23 evaluation of both ‘the likelihood of success on the merits and the ability of the petitioner to  
24 articulate his claims pro se in light of the complexity of the legal issues involved.’ Neither  
25 of these factors is dispositive and both must be viewed together before reaching a  
26 decision.” Id.

27 Plaintiff contends that the appointment of counsel is warranted on the grounds that  
28 the legal issues involved in this case are beyond the scope of his expertise. However, the

1 same can be said in virtually every case brought by a pro se, non-attorney litigant. That  
2 aside, the Court has reviewed Plaintiff's various submissions in this action and finds that  
3 Plaintiff is capable of clearly articulating the substance of his claims, relative to the  
4 complexity involved. As to Plaintiff's likelihood of success, the Court has not been  
5 presented with sufficient information to make such an assessment. Finally, the Court notes  
6 that there is no indication that Plaintiff has made any effort to retain counsel on his own.  
7 See Bailey v. Lawford, 835 F. Supp. 550, 552 (S.D. Cal. 1993) ("§ 1915(d) ... requires that  
8 indigent plaintiffs make a reasonably diligent effort to secure counsel as a prerequisite to  
9 the court's appointing counsel for them").<sup>1</sup> In sum, the Court is not persuaded that  
10 exceptional circumstances exist to justify the appointment of counsel in this action.  
11 Accordingly,

12 IT IS HEREBY ORDERED THAT Plaintiff's request for appointment of counsel is  
13 DENIED.

14 IT IS SO ORDERED.

15 Dated: March 5, 2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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26 <sup>1</sup> As noted, the Court may appoint an attorney to represent a person "unable to afford  
27 counsel." 28 U.S.C. § 1915(e)(1). At the time Plaintiff filed this action, he was  
28 incarcerated, and obviously unable to maintain employment. However, Plaintiff has been  
out of custody at least since April 2, 2012. Plaintiff has made no showing that he *presently*  
is unable to afford counsel.

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Case Number: CV09-04693 SBA

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**CERTIFICATE OF SERVICE**

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13

14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
15 Court, Northern District of California.

16

17 That on March 5, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
18 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
19 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
20 located in the Clerk's office.

18

19

20 O'Marr L. Burnett  
21 9949 Lawlor Street  
22 Oakland, CA 94605

23 Dated: March 5, 2013

24

Richard W. Wieking, Clerk  
By: Lisa Clark, Deputy Clerk

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