

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICK MADSEN,

No. C 09-05457 SBA (PR)

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR RECONSIDERATION;
DENYING HIS REQUEST FOR
APPOINTMENT OF COUNSEL; AND
REOPENING CASE**

v.

SUE E. RISENHOOVER, et al.,

Defendants.

(Docket nos. 6, 7, 8)

This civil rights action was dismissed without prejudice by the Court on December 18, 2009. The Court concluded that dismissal was required because Plaintiff failed to submit a timely application for leave to proceed in forma pauperis (IFP) by the December 17, 2009 deadline. Plaintiff now seeks reconsideration of the dismissal by filing a document entitled "Plaintiff Seeks Leave and Reconsideration of this Court's Order dated December 18, 2009," which the Court construes as a motion for reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure.

Where the district court's ruling has resulted in a final judgment or order, a motion for reconsideration may be filed under Rule 60(b). Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Plaintiff contends that he submitted his completed IFP application to prison authorities on December 8, 2009. The record shows that Plaintiff's IFP application along with his certificate of funds and prison trust account statement were received by the Clerk of the Court on December 17, 2009; however, these documents were not entered into the Court's electronic database until December 28, 2009 -- ten days after the aforementioned dismissal order was signed and issued. Because the record shows that Plaintiff's IFP application was received by the December 17, 2009 deadline, Plaintiff's motion for reconsideration (docket nos. 7, 8) is GRANTED.

1 Plaintiff has also filed a requests for appointment of counsel. The Court is unable to assess
2 at this time whether exceptional circumstances exist which would warrant seeking volunteer
3 counsel to accept a pro bono appointment in this case. The proceedings are at an early stage and it
4 is premature for the Court to determine Plaintiff's likelihood of success on the merits. Moreover,
5 Plaintiff has been able to articulate his claims adequately pro se in light of the complexity of the
6 issues involved. See Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir.
7 2004). Accordingly, Plaintiff's request for appointment of counsel (docket no. 6) is DENIED at this
8 time. This does not mean, however, that the Court will not consider appointment of counsel at a
9 later juncture in the proceedings, that is, after Defendants have filed their dispositive motion and
10 the Court has a better understanding of the procedural and substantive matters at issue. Therefore,
11 Plaintiff may file a renewed motion for the appointment of counsel after Defendants' dispositive
12 motion has been filed. If the Court decides that appointment of counsel is warranted at that time,
13 then it can seek volunteer counsel to agree to represent Plaintiff pro bono in this action.

14 **CONCLUSION**


15 1. Plaintiff's motion for reconsideration (docket nos. 7, 8) is GRANTED. The Clerk
16 shall REOPEN this action, VACATE the Court's December 18, 2009 Order of Dismissal Without
17 Prejudice, and REINSTATE the complaint filed on November 17, 2009. The Court will review
18 Plaintiff's complaint in a separate written Order.

19 2. Plaintiff's request for appointment of counsel (docket no. 6) is DENIED.

20 3. This Order terminates Docket nos. 6, 7 and 8.

21 IT IS SO ORDERED.

22 DATED: 1/25/10

23 
SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICK MADSEN,
Plaintiff,

Case Number: CV09-05457 SBA

CERTIFICATE OF SERVICE

v.

SUE E. RISENHOOVER et al,
Defendant.

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

That on January 27, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rick Madsen E10400
5905 Lake Earl Drive
Crescent City, CA 95531

Dated: January 27, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk