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

SHANNON RILEY,

Plaintiff,

v.

S. ROACH, et al.,

Defendants.

No. C 10-02088 CW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Plaintiff has filed a motion for appointment of counsel to represent him in this action.

There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the

1 ability of the plaintiff to articulate his claims pro se in light
2 of the complexity of the legal issues involved. See id. at 1525;
3 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v.
4 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these
5 factors must be viewed together before reaching a decision on a
6 request for counsel under § 1915. See id.

7 The Court is unable to assess at this time whether exceptional
8 circumstances exist which would warrant seeking volunteer counsel
9 to accept a pro bono appointment. The proceedings are at an early
10 stage and it is premature for the Court to determine Plaintiff's
11 likelihood of success on the merits. Accordingly, the request for
12 appointment of counsel at this time is DENIED. The Court will
13 consider appointment of counsel later in the proceedings, after
14 Defendants have filed their dispositive motion and the Court has a
15 better understanding of the procedural and substantive matters at
16 issue. Therefore, Plaintiff may file a renewed motion for the
17 appointment of counsel after Defendants' dispositive motion has
18 been filed. If the Court decides that appointment of counsel is
19 warranted at that time, it will seek volunteer counsel to agree to
20 represent Plaintiff pro bono.

21 This Order terminates Docket no. 16.

22 IT IS SO ORDERED.

23 Dated: 2/22/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SHANNON RILEY,

5 Plaintiff,

6 v.

7 ROACH et al,

8 Defendant.

Case Number: CV10-02088 CW

CERTIFICATE OF SERVICE

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

11 That on February 22, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
14 delivery receptacle located in the Clerk's office.

15 Shannon Riley E-48875 D7-125
16 SALINAS VALLEY STATE PRISON (1050)
17 PO BOX 1050
18 SOLEDAD, CA 93960-1050

19 Dated: February 22, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk