

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL E. SHOTWELL,

Plaintiff,

v.

S. BRANDT, et al.,

Defendants.

No. C 10-05232 CW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL; DENYING
REQUEST FOR EXTENSION OF TIME
AS MOOT

Plaintiff, a state prisoner, filed the instant pro se prisoner complaint under 42 U.S.C. § 1983. Before the Court is Plaintiff's motion for appointment of counsel and also his request for extension of time to respond to the Court's Order directing him to show cause as to why his claims against the unserved defendants should not be dismissed.

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25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952

1 (9th Cir. 1998) (en banc). The court may ask counsel to represent
2 an indigent litigant under 28 U.S.C. § 1915 only in "exceptional
3 circumstances," the determination of which requires an evaluation
4 of both (1) the likelihood of success on the merits, and (2) the
5 ability of the plaintiff to articulate his claims pro se in light
6 of the complexity of the legal issues involved. See id. at 1525;
7 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v.
8 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these
9 factors must be viewed together before reaching a decision on a
10 request for counsel under § 1915. See id.

11 The Court is unable to assess at this time whether exceptional
12 circumstances exist which would warrant seeking volunteer counsel
13 to accept a pro bono appointment. The proceedings are at an early
14 stage and it is premature for the Court to determine Plaintiff's
15 likelihood of success on the merits. Accordingly, the request for
16 appointment of counsel at this time is DENIED without prejudice to
17 the Court's considering at a later stage of the proceedings whether
18 appointment of counsel is warranted.

19 On May 2, 2011, Plaintiff filed a motion for extension of time
20 to respond to the Court's April 18, 2011 Order. In that Order, the
21 Court directed Plaintiff to show cause as to why claims against the
22 unserved named Defendants should not be dismissed within thirty
23 days from the date of that Order. On May 4, 2011, Plaintiff filed
24 a timely response to the Court's Order to show cause.

25 Accordingly, Plaintiff's motion for extension of time is
26 DENIED as moot.

27

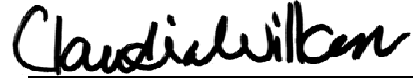
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Order terminates Docket nos. 12 and 17.

IT IS SO ORDERED.

Dated: 6/16/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 MANUEL E SHOTWELL,

5 Plaintiff,

6 v.

7 S BRANDT et al,

8 Defendant.

Case Number: CV10-05232 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 June 16, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Manuel Shotwell T-57486
16 D-7-118 low
17 Salinas Valley State Prison
18 P. O. Box 1050
19 Soledad, Ca 93960-1050

20 Dated: June 16, 2011

21 Richard W. Wiekling, Clerk
22 By: Nikki Riley, Deputy Clerk
23
24
25
26
27
28