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E-FILED - 10/15/08

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

ROBERT LEE JENKINS, JR.,)
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 Plaintiff,)
)
 v.)
)
 CORRECTIONAL OFFICER)
 CAPLAN, et al.,)
)
 Defendants.)
 _____)

No. C 02-5603 RMW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Docket No. 64)

Plaintiff has filed a request for the appointment of counsel to represent him in the instant 42 U.S.C. § 1983 civil rights action. However, there is no constitutional right to counsel in a civil case. Lassiter v. Dep’t of Social Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district court only the power to “request” that counsel represent a litigant who is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the courts the power to make “coercive appointments of counsel.” Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989).

The court may ask counsel to represent an indigent litigant under § 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 ability of the plaintiff to articulate his claims pro

1 se in light of the complexity of the legal issues involved. See Rand v. Rowland, 113 F.3d 1520,
2 1525 (9th Cir. 1997). Both of these factors must be viewed together before reaching a decision
3 on a request for counsel under § 1915. See id. Neither the need for discovery, nor the fact that
4 the pro se litigant would be better served with the assistance of counsel, necessarily qualify the
5 issues involved as complex. See Rand, 113 F.3d at 1525 (where plaintiff's pursuit of discovery
6 was comprehensive and focused and his papers were generally articulate and organized, district
7 court did not abuse discretion in denying request for counsel).

8 Here, the court has yet to review the merits of plaintiff's complaint. The court finds that
9 exceptional circumstances entitling plaintiff to the appointment of counsel do not exist. The
10 likelihood of plaintiff's success on the merits cannot be ascertained at this point in the
11 proceedings, and the legal issues are not complex. Accordingly, the court concludes that
12 appointment of counsel is premature at this time. Plaintiff's motion for appointment of counsel
13 (docket no. 64) is DENIED without prejudice.

14 IT IS SO ORDERED.

15 Dated: 10/10/08

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18 RONALD M. WHYTE
19 United States District Judge
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