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*\*E-FILED - 7/29/11\**

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

FLOYD SMITH,	)	No. C 04-4793 RMW (PR)
	)	
Plaintiff,	)	ORDER DENYING MOTION
	)	FOR APPOINTMENT OF
v.	)	EXPERT
	)	
J.S. WOODFORD, et al.,	)	(Docket Nos. 114, 122)
	)	
Defendants.	)	

Plaintiff, a state prisoner proceeding pro se and currently confined at San Quentin State Prison, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff moves, pursuant to Rule 706 of the Federal Rules of Evidence, for appointment of an expert, and specifically, a polygraph examiner.

Pursuant to Rule 702 of the Federal Rules of Evidence, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Fed. R. Evid. 702. Under Rule 706, the Court may on its own motion or on the motion of a party appoint an expert witness. Fed. R. Evid. 706(a).

At this point in the proceedings, the Court finds it is premature to determine whether appointment of an expert or polygraph examiner is warranted. Specifically, until the court has

1 had the opportunity to review the arguments and evidence submitted by the parties on summary  
2 judgment, no determination can be made that the issues are so complex as to require an expert to  
3 assist the trier of fact. Accordingly, plaintiff's motion for appointment of an expert will be  
4 DENIED as premature. This denial is without prejudice to renewal, once defendants' motion for  
5 summary judgment has been considered.

6 IT IS SO ORDERED.

7 DATED: 7/28/11

  
RONALD M. WHYTE  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SMITH et al,  
Plaintiff,

Case Number: CV04-04793 RMW

**CERTIFICATE OF SERVICE**

v.

WOODFORD et al,  
Defendant.

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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 July 29, 2011, 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.

Floyd Smith K-72700  
San Quentin State Prison  
San Quentin, CA 94974

Dated: July 29, 2011

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk