

1 **** E-filed November 30, 2009 ****

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7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 FANG-YUH HSIEH,

No. C09-05455 HRL

12 Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL**

13 v.

[Re: Docket No. 3]

14 STANFORD UNIVERSITY; ERIC K.
SHINSEKI, Dept. of Veterans Affairs; and
PHILIP LAVORI, in his individual capacity,

15 Defendants.

16 _____/

17 Presently before the court is plaintiff's motion for the appointment of counsel pursuant to 28
18 U.S.C. § 1915(e)(1).¹ Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, plaintiff has expressly
19 consented that all proceedings in this matter may be heard and finally adjudicated by the
20 undersigned.

21 Generally, there is no right to counsel in a civil case. *See Lassiter v. Dep't of Soc. Servs.*,
22 452 U.S. 18, 25 (1981). However, under 28 U.S.C. § 1915(e)(1), courts have discretion to request
23 volunteer counsel for indigent civil litigants upon a showing of exceptional circumstances. *See* 28
24 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent any person unable to afford
25 counsel"); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) ("The court may appoint
26 counsel under section 1915[(e)(1)] . . . only under 'exceptional circumstances' "). Section
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¹ The provisions of § 1915(e)(1) were formerly located at 28 U.S.C. § 1915(d).

1 1915(e)(1) does not give courts the power to make coercive appointments of counsel. *Mallard v.*
2 *U.S. Dist. Court*, 490 U.S. 296, 310 (1989).

3 In order to determine whether exceptional circumstances exist, this court must determine (1)
4 the likelihood of success on the merits and (2) the ability of the plaintiff to articulate his claims *pro*
5 *se* in light of the complexity of the legal issues involved. *Terrell*, 935 F.2d at 1017. Both of these
6 factors must be viewed together before reaching a decision on a request for counsel under § 1915.
7 *See id.*

8 In this case, the court does not find that exceptional circumstances exist. First, the court is
9 unable to discern from the complaint the likelihood of success on the merits. Second, the court finds
10 that the issues plaintiff raises in his complaint are not complex, and, based on the papers filed to
11 date, it is clear that plaintiff is capable of adequately articulating his claims *pro se*. Accordingly, the
12 court denies the request, but suggests that plaintiff may wish to contact the following organization
13 for possible assistance in obtaining representation:

14 **Santa Clara County Bar Association Lawyer Referral Service**

15 31 North Second Street, 4th Floor
16 San Jose, CA 95113
17 Phone: (408) 287-2557
18 Fax: (408) 850-1506
19 <http://www.sccba.com>

20 **IT IS SO ORDERED.**

21
22 Dated: November 30, 2009

23 
24 _____
25 HOWARD R. LLOYD
26 UNITED STATES MAGISTRATE JUDGE
27
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1 **C 09-05455 Notice will be sent by other means to:**

2 Fang-Yuh Hsieh
3 1394 University Ave.
4 Palo Alto, CA 94301

5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
6 **registered for e-filing under the court's CM/ECF program.**

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