

United States District Court  
For the Northern District of California

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**\*E-FILED 01-18-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IRMA CARRANZA; ROSENDO CARRANZA, No. C10-04356 HRL

Plaintiffs,

v.

**ORDER DENYING PLAINTIFFS’  
REQUEST FOR APPOINTMENT OF  
COUNSEL**

AMERICAN PREMIER FUNDING, INC.;  
EWV ENTERPRISES, INC.; BANKUNITED  
AS ALLEGED SUCCESSOR IN INTEREST  
TO BANKUNITED FSB; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC.; ROBERT E. WEISS INCORPORATED;  
DOES 1-30,

[Re Docket No. 35]

Defendants.

Plaintiffs move for the appointment of counsel. Specifically, they request referral to the Federal Pro Bono Project for the purpose of obtaining representation in connection with two motions set for a February 8, 2011 hearing: (1) defendants’ motion for fees; and (2) plaintiffs’ own motion to deny defendants’ bill of costs. They also request that the briefing and hearing on those motions be continued pending the appointment of an attorney who will represent them. Defendants oppose the motion. Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all parties who have appeared in this matter have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned.

Generally, there is no right to counsel in a civil case. See Lassiter v. Dep’t of Social

1 Services, 452 U.S. 18, 25 (1981). Under 28 U.S.C. § 1915(e)(1), courts have discretion to  
2 request volunteer counsel for indigent civil litigants upon a showing of exceptional  
3 circumstances. See 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent  
4 any person unable to afford counsel”); see also Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.  
5 1991) (“The court may appoint counsel under section 1915[(e)(1)] . . . only under ‘exceptional  
6 circumstances’”). In order to determine whether exceptional circumstances exist, this court  
7 must determine (1) the likelihood of success on the merits and (2) the ability of the plaintiffs to  
8 articulate their claims pro se in light of the complexity of the legal issues involved. Terrell, 935  
9 F.2d at 1017. Both of these factors must be viewed together before reaching a decision on a  
10 request for counsel under § 1915. See id.

11 Plaintiffs say that they do not have sufficient funds to retain an attorney. Defendants are  
12 skeptical of this representation. But even assuming, for present purposes, that plaintiffs cannot  
13 afford counsel, the court does not find that exceptional circumstances exist. Plaintiffs were  
14 represented by counsel at the outset of this litigation, and the lawsuit was voluntarily dismissed  
15 shortly after it was removed here. The only matters that remain in dispute—i.e., defendants’  
16 request for payment of their fees and costs incurred—are not complex. After their counsel  
17 withdrew from the case, plaintiffs proceeded to represent themselves. It is unclear what efforts  
18 they have made to find another attorney to represent them on terms they can afford. And, in any  
19 event, most of plaintiffs’ briefing in connection with the February 8, 2011 motions have already  
20 been filed. Indeed, by the time the instant motion was filed, plaintiffs had already filed their  
21 motion to deny defendants’ bill of costs, as well as their opposition to defendants’ pending  
22 motion. All that remains for plaintiffs to do is (a) file their reply brief on their motion to deny  
23 defendants’ bill of costs and (b) appear at the motion hearing. Accordingly, this court declines  
24 to refer plaintiffs to the Northern District of California’s Federal Pro Bono Project, and their  
25 motion for the appointment of counsel is denied.

26 SO ORDERED.

27 Dated: January 18, 2011

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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

1 5:10-cv-04356-HRL Notice has been electronically mailed to:

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10 Pro Se Plaintiffs

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