

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEITH WAYNE SEKERKE,
CDCR #V-15331,

Plaintiff,

v.

ROBERT HERNANDEZ, Warden;
JASON SILVA, Doctor,

Defendants.

Case No. 09-CV-360-JAH (JMA)

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

[Doc. No. 16]

Plaintiff Keith Wayne Sekerke, a former state prisoner currently held in the San Diego Central Jail and proceeding *pro se* and *in forma pauperis*, has filed a Complaint pursuant to 42 U.S.C. § 1983. [Doc. No. 1] Plaintiff has submitted a motion in which he requests that the Court appoint counsel for him pursuant to 28 U.S.C. § 1915. [Doc. No. 16] For the reasons set forth below, Plaintiff's motion is **DENIED**.

Plaintiff is requesting appointment of counsel because he is a lay person. He also argues, without support, that his case has a likelihood of success on the merits.

"[T]here is no absolute right to counsel in civil proceedings." *Hedges v. Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). District courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to appoint counsel for indigent civil litigants upon a showing of "exceptional circumstances." See *Terrell v.*

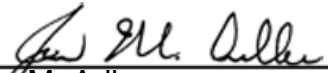
1 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances
2 requires an evaluation of both ‘the likelihood of success on the merits and the ability of
3 the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
4 involved.’ Neither of these factors is dispositive and both must be viewed together
5 before reaching a decision.” *Id.* (citations omitted).

6 Plaintiff has demonstrated an ability to articulate the factual and legal bases of
7 his claim with sufficient clarity. Indeed, Plaintiff has been successful in getting a
8 Complaint on file, successfully filing a motion for leave to proceed *in forma pauperis*,
9 successfully filing a motion for leave to amend the complaint, filing additional motions
10 (denied as moot) and effecting service on defendants. Based on the information
11 currently before the Court, it appears that Plaintiff has the competence and ability to
12 pursue his case. Without more, this Court cannot conclude that there are “exceptional
13 circumstances” which would warrant the appointment of counsel in Plaintiff’s case.

14 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff’s motion for
15 appointment of counsel is **DENIED**.

16 **IT IS SO ORDERED.**

17 DATED: August 11, 2009

18
19 
20 Jan M. Adler
21 U.S. Magistrate Judge
22
23
24
25
26
27
28