

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**

HOANG MINH TRAN,
CDCR #AA-5994,

Plaintiff,

vs.

WILLIAM D. GORE, Sheriff;
E. SCHROEDER, San Diego Sheriff Officer;
BRANDT O. PILE, San Diego Sheriff
Officer (erroneously sued as "PILE DOE");
WILSON DOE, San Diego Sheriff Officer;
BROWN DOE, San Diego Sheriff Officer;
JOHN DOES, GBDF Doctors; JANE DOES,
GBDF Doctors; JOHN DOES, 5A Rover
Sheriff Officer; JANE DOE, GBDF Nurse;
JOHN GILL, M.D., San Diego County
Medical Service Division; LIZZIE
WOMACK, R.N.; SARANDI MARINA, San
Diego County Medical Services Division;
JOHN DOES 1-3, San Diego Sheriff
Officers,

Defendants.

Civil No. 10cv2682 BTM (BLM)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

[ECF No. 25]

Plaintiff, a former state prisoner, is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On May 23, 2011, and while Plaintiff was still incarcerated, the Court denied his first request for appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) (ECF No. 4). On August 27, 2012, Plaintiff filed a second Motion requesting appointment of pro bono counsel (ECF No.

1 25), this time claiming such an appointment is necessary because, while no longer incarcerated,
2 he is “under heavy psychotropic medications,” has “physical walking disability,” and a “hearing
3 impairment.” (*Id.* at 1-2.) Plaintiff contends the Court must appoint counsel pursuant to its Plan
4 for Representation of Pro Se Litigants in Civil Cases, as adopted by General Order No. 596.

5 “[T]here is no absolute right to counsel in civil proceedings.” *Hedges v. Resolution Trust*
6 *Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, federal courts
7 do not have the authority “to make coercive appointments of counsel.” *Mallard v. United States*
8 *District Court*, 490 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S.*
9 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

10 Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to “request”
11 that an attorney represent indigent civil litigants upon a showing of “exceptional circumstances.”
12 *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A finding
13 of the exceptional circumstances of the plaintiff seeking assistance requires at least an evaluation
14 of the likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability
15 to articulate his claims ‘in light of the complexity of the legal issues involved.’” *Id.* (quoting
16 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*, 935
17 F.2d 1015, 1017 (9th Cir. 1991).

18 No doubt most pro se litigants “find it difficult to articulate [their] claims,” and would be
19 better served with the assistance of counsel. *Wilborn*, 789 F.2d at 1331. For this reason, in the
20 absence of counsel, federal courts employ procedures which are highly protective of a pro se
21 litigant’s rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se complaint to
22 less stringent standard) (per curiam). In fact, where a plaintiff appears pro se in a civil rights
23 case, the court must construe the pleadings liberally and afford the plaintiff any benefit of the
24 doubt. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The rule
25 of liberal construction is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963
26 F.2d 1258, 1261 (9th Cir. 1992).

27 Thus, so long as a pro se litigant, like Plaintiff in this case, is able to “articulate his
28 claims” in light of the relative complexity of the matter, the “exceptional circumstances” which

1 might *require* the appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; *accord*
2 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

3 On August 4, 2011, this Court adopted a Plan for the Representation of Pro Se Litigants
4 in Civil Cases. *See* S.D. Cal. General Order No. 596. Pursuant to the Plan, the Court may—but
5 is not required to—select a case for appointment of pro bono counsel, upon the consideration of
6 several factors, including: (1) the inability of the pro se party to retain counsel by other means,
7 (2) the potential merit of the claims as set forth in the pleadings; (3) the nature and complexity
8 of the action, both factually and legally, including the need for factual investigation and
9 evidentiary presentation at motions or trial; (4) whether the pro se party has another case pending
10 before this Court and, if so, whether counsel has been appointed in such case; (5) the degree to
11 which the ends of justice will be served by appointment of counsel, including the extent to which
12 the Court may benefit by appointment of counsel; and (6) any other factors deemed appropriate.

13 In this case, Plaintiff fails to demonstrate the extraordinary circumstances necessary to
14 justify a pro bono appointment either under *Wilborn* and its progeny or General Order 596.
15 Plaintiff has not shown how his medical conditions prevent him from sufficiently prosecuting
16 his lawsuit.¹ In fact, Plaintiff’s filings in this case, and in several others he is currently litigating
17 in the Southern District of California,² show he has both a good grasp of the bases of his claims,
18 and has been able to articulate them in light of the relative complexity of the legal issues
19 involved. *Agyeman*, 390 F.3d at 1103 ; *Terrell*, 935 F.2d at 1017; *Palmer*, 560 F.3d at 970
20 (finding district court did not abuse its discretion in refusing to appoint counsel when pro se
21 prisoner “had done ‘quite a good job’ putting on his case and was able to “present evidence
22 effectively.”). In addition, the Court has considered the factors set out in its Pro Bono Plan, and
23 determines that appointment of pro bono counsel is not warranted at this time.

24
25 ¹Plaintiff merely states that his medications slow his response time (possibly due to a hearing
26 loss) and cause “dizziness, drowsiness, and lack of concentration.” ECF No. 25 at 1, n.1. Plaintiff also
states that he has difficulty walking and chronic pain. *Id.* at 2.

27 ² A court ““may take notice of proceedings in other courts, both within and without the federal
28 judicial system, if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508
F.3d 1212, 1225 (9th Cir. 2007) ((quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.
2002)). Plaintiff is simultaneously proceeding pro se in *Tran v. Gore, et al.*, S.D. Cal. Civil Case No.
10cv0464 GPC (DHB) and *Tran v. Gore, et al.*, S.D. Cal. Civil Case No. 10cv2457 BTM (WVG).

1 Finally, the Court notes that Plaintiff is no longer restricted by his imprisonment and was
2 able to retain counsel on his own in *Tran v. Gore*, S.D. Cal. Civil Case No. 10cv0464 GPC
3 (DHB), but that counsel eventually withdrew.

4 For these reasons, the Court **DENIES** Plaintiff's Motion to Appoint Counsel without
5 prejudice (ECF No. 25).

6 **IT IS SO ORDERED.**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 24, 2012



BARBARA L. MAJOR
United States Magistrate Judge