

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**

ROBERT MARK BROWN, II,

vs.

WILLIAM D. GORE; FRANK C.
CLAMSER; DEPUTY #1; DEPUTY
VILLAREALL; DEPUTY #3 DEPUTY
WEBBER; DEPUTY #5,

Defendants.

CASE NO. 12-cv-1938-GPC(BGS)

**ORDER DENYING
PLAINTIFF'S MOTION
REQUESTING
RECONSIDERATION FOR THE
APPOINTMENT OF COUNSEL**

[Doc. No. 88]

On July 16, 2013, Plaintiff Robert Mark Brown, II, a prisoner proceeding *pro se* and *In Forma Pauperis* (“IFP”) in this civil rights action, filed a motion requesting reconsideration of motion for the appointment of counsel. (Doc. No. 88.)

Plaintiff requests appointment of counsel for the following reasons: (1) he is proceeding IFP, and he cannot afford to retain legal representation; (2) the case is complex; (3) he, as a non-criminal pro-per inmate has no access to the law library; (4) he has attempted but failed to retain legal representation; (5) he has limited knowledge of the law; (6) he was served with a motion to quash 5 subpoenas, and motion for protective order by Defendants; and (7) Defendants’ counsel will not cooperate with Plaintiff’s discovery. (Doc. No. 88.)

“There is no constitutional right to appointed counsel in a § 1983 action.” *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349,

1 1353 (9th Cir. 1981)); *see also Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360,
2 1363 (9th Cir. 1994) (“[T]here is no absolute right to counsel in civil proceedings.”) (citation
3 omitted).


4 District courts have discretion, however, pursuant to 28 U.S.C. Section 1915(e)(1), to
5 “request” that an attorney represent indigent civil litigants upon a showing of “exceptional
6 circumstances.” *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir.
7 2004); *Rand*, 113 F.3d at 1525. “A finding of the exceptional circumstances of the plaintiff
8 seeking assistance requires at least an evaluation of the likelihood of the plaintiff’s success on
9 the merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the
10 complexity of the legal issues involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v.*
11 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*, 935 F.2d 1015,
12 1017 (9th Cir. 1991).

13 The Court denies Plaintiff’s request without prejudice, as neither the interests of justice
14 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,
15 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017. Plaintiff has thus far been able
16 to articulate his claims, as the Court found that Plaintiff’s complaint contains allegations
17 sufficient to survive the sua sponte screening required by 28 U.S.C. §§1915(e)(2) and
18 1915A(b). (*See Doc. No. 6 at 5.*)

19 In addition, the Court denied Plaintiff’s prior request for appoint of counsel on
20 December 20, 2012, and June 25, 2013. It does not appear that the legal issues involved have
21 now become so complex that counsel is warranted at this stage of proceeding. *See Wilborn v.*
22 *Escalderon*, 789 F.3d 1328, 1331 (9th Cir. 1986) (noting that, “If all that was required to
23 establish successfully the complexity of the relevant issues was a demonstration of the need
24 for development of further facts, practically all cases would involve complex legal issues.”).

25 **IT IS SO ORDERED.**

26 DATED: September 12, 2013

27
28 

Hon. Bernard G. Skomal
U.S. Magistrate Judge