

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 WILLIAM DAWES,
12 Plaintiff,
13 vs.
14 HOWARD AUSBURY, et al.,
15 Defendants.
16
17

Case No.: 19-cv-02122-MMA (VET)

ORDER

(1) OVERRULING OBJECTION;

**(2) APPOINTING PRO BONO
COUNSEL PURSUANT TO
28 U.S.C. § 1915(e)(1) AND
S.D. Cal. Gen. Order 596**

18
19 **I. INTRODUCTION**

20 Plaintiff William Dawes (“Dawes”) is a California inmate who filed a *pro se* civil
21 rights action pursuant to 42 U.S.C. § 1983 in this case. In his original complaint, he
22 alleged Defendants destroyed his property, his public defenders did not properly
23 represent him, he was denied due process, and Defendants Bravo, Gene, Ugalde,
24 Ausbury, Silva, Shellano, Ayala, Solis, and Zuniga used excessive force on him while he
25 was incarcerated at R.J. Donovan Correctional Facility in 2016. Doc. No. 1. The
26 complaint and the amended complaint were screened and all of Dawes’s claims were
27 ultimately dismissed except for his excessive force claims. *See* Doc. Nos. 9, 13, 15. On
28

1 April 19, 2021, the Court stayed this case until Dawes’s related criminal case in state
2 court was resolved. *See* Doc. No. 46; *see also* S.D. Sup. Ct. No. SCS287189.

3 In August of 2024, Dawes’s state criminal charges were dismissed because of his
4 ongoing incompetency, and Defendants then asked this Court to lift the stay and hold a
5 hearing to appoint a guardian ad litem for Dawes under Federal Rule of Civil Procedure
6 17(c)(2), which requires the Court to “appoint a guardian ad litem — or issue another
7 appropriate order — to protect a[n] incompetent person who is unrepresented in an
8 action.” Fed. R. Civ. P. 17(c)(2); *see* Doc. No. 100-1 at 13; Doc. No. 100-2 at 2. In an
9 August 14, 2024 order, this Court lifted the stay; thus, while Dawes’s other claims were
10 dismissed during screening, his excessive force claims remain to be litigated in this
11 case. *See* Doc. No. 15. The Court also determined that to meet its obligation under
12 Rule 17(c)(2), it would reconsider Dawes’s motions to appoint counsel and referred the
13 matter to the Court’s Pro Bono Panel. *Id.* The Court has since identified volunteer pro
14 bono counsel willing to assist Dawes in prosecuting the claims remaining in his case, but
15 in the meantime, Dawes has filed an objection to the appointment of counsel. *See* Doc.
16 No. 105.

17 **II. DISCUSSION**

18 **A. Dawes’s Objection**

19 In his Objection to Appointment of Counsel, Dawes focuses on events that
20 occurred in his state criminal case and not this current federal civil rights case.
21 Specifically, he complains about his state public defenders, state court orders for
22 involuntary medications, and the conditions of his confinement. *See* Doc. No. 105.
23 While the Court understands that Dawes is upset and frustrated with how his state court
24 criminal case was handled, his case before this Court concerns only allegations by Dawes
25 that Defendants Bravo, Gene, Ugalde, Ausbury, Silva, Shellano, Ayala, Solis, and Zuniga
26 used excessive force on him while he was incarcerated at R.J. Donovan Correctional
27 Facility in 2016. *See* Doc. No. 13 at 16.
28

1 A civil litigant is not entitled to counsel as a matter of course, but because Dawes
2 was found incompetent to stand trial in state court in January of 2024, Rule 17(c)(2)
3 requires this Court to protect his interests in bringing his case. In order to do that, the
4 Court has sought and has since identified volunteer counsel to represent Dawes so he may
5 pursue the excessive force claims against Defendants Bravo, Gene, Ugalde, Ausbury,
6 Silva, Shellano, Ayala, Solis, and Zuniga that remain in this civil rights case pending
7 before this Court. *See AT&T Mobility, LLC v. Yeager*, 143 F. Supp. 3d 1042, 1053 (E.D.
8 Cal. Nov. 10, 2015) (citing *Davis v. Walker*, 745 F.3d 1303, 1311 (9th Cir. 2014)) (“The
9 appointment of counsel may serve as [an] alternative to the appointment of a guardian ad
10 litem.”) The Court is hopeful that this case can proceed if Dawes is represented by his
11 volunteer pro bono counsel. To that end, the Court encourages Dawes to assist and
12 cooperate with the volunteer attorneys appointed by this Order who will protect his
13 interests and justly prosecute his current civil rights claims. *See United States ex rel*
14 *Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (noting that the appointment of
15 counsel in a civil case “is a privilege and not a right.”).

16 For these reasons, his Objection is **OVERRULED**.

17 **B. Appointment of Pro Bono Counsel**

18 As noted, there is no right to counsel in a civil action, but a court may under
19 “exceptional circumstances” exercise its discretion and “request an attorney to represent
20 any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1); *Palmer v. Valdez*, 560
21 F.3d 965, 970 (9th Cir. 2009). The court generally must consider both “the likelihood of
22 success on the merits as well as the ability of the [Plaintiff] to articulate his claims *pro se*
23 in light of the complexity of the legal issues involved.” *Id.* (quoting *Weygandt v. Look*,
24 718 F.2d 952, 954 (9th Cir. 1983)).

25 While Dawes adequately pleaded a factual basis for his excessive force claims at
26 the time he filed his amended complaint in this case on February 4, 2020, he has been
27 found incompetent in San Diego Superior Court criminal proceedings in Case No.
28 SCS287189. Doc. No. 100-1 at 4; Doc. No. 101 at 3. Thus, in addition to this Court’s

1 duty to protect Dawes’s interest in prosecuting his case under Rule 17(c)(2), *see Davis v.*
2 *Walker*, 745 F.3d 1303, 1310 (9th Cir. 2014), the Court’s Plan for the Representation of
3 *Pro se* Litigants in Civil Cases provides that “if it is apparent from the pleadings and
4 other materials before the Court that the pro se civil plaintiff has mental or other
5 disabilities substantially interfering with his or her ability to present the factual and legal
6 claims,” it may appoint volunteer counsel. *See* S.D. Cal. Gen. Order 596, adopted Aug.
7 3, 2011.

8 Because the ends of justice would be served by the appointment of pro bono
9 counsel under these circumstances, on August 14, 2022, the Court elected to exercise its
10 discretion pursuant to 28 U.S.C. § 1915(e)(1) and randomly referred Dawes’s case to its
11 Pro Bono Panel for potential representation. Volunteer counsel has since graciously
12 agreed to represent him pro bono during the course of all further proceedings held before
13 this Court in this case. *See* S.D. Cal. Gen. Order 596.

14 III. CONCLUSION

15 For the reasons discussed, the Court **OVERRULES** Dawes’s objection to
16 appointment of counsel and **APPOINTS** Karen L. Alexander, and Courtney Baird of
17 Duane Morris LLP, 750 B Street, Suite 2900, San Diego, California, 92101 as Pro Bono
18 Counsel for Plaintiff William Dawes.

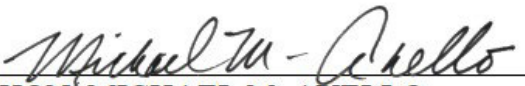
19 Pursuant to S.D. Cal. CivLR 83.3.f.2, Pro Bono Counsel must file, within twenty-
20 eight (28) days of this Order if possible, a formal written Notice of Substitution of
21 Attorney signed by both Plaintiff Dawes and his newly appointed counsel. This Notice
22 of Substitution will be considered approved by the Court upon filing, and Pro Bono
23 Counsel will thereafter be considered attorney of record for Dawes for all purposes
24 *during further proceedings before this Court, in this matter only, and at the Court’s*
25 *specific request.* *See* S.D. Cal. CivLR 83.3.f.1, 2.¹

26
27
28 ¹ Dawes is cautioned that the Court’s Pro Bono Panel is a precious and limited resource.
The fact that the Court has found this case suitable for appointment at this stage of the

1 The Court further **DIRECTS** the Clerk of the Court to forward Ms. Alexander and
2 Ms. Baird a copy of this Order upon entry in CM/ECF to klalexander@duanemorris.com
3 and clbaird@duanemorris.com and to also serve them with a copy via U.S. Mail at the
4 address listed above upon filing. See S.D. Cal. CivLR 83.3.f.2.

5 **IT IS SO ORDERED.**

6 Dated: September 24, 2024

7 

8 HON. MICHAEL M. ANELLO
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25 proceedings, and has been able to locate available volunteer counsel does not entitle him
26 to the appointment of counsel in this or any other case. Nor does it permit him an attorney
27 of his choosing, or guarantee any subsequent Pro Bono Panel referral or appointment. See
28 *Hedges v. Resolution Trust Corp (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994)
 (“[T]here is no absolute right to counsel in civil proceedings.”) (citation omitted); *United*
 States ex rel Gardner v. Madden, 352 F.2d 792, 793 (9th Cir. 1965) (noting that the
 appointment of counsel in a civil case “is a privilege and not a right.”).