

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MICHAEL C. TIERNEY,	)	CIVIL NO. 12-00056 LEK-RLP
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOIS TORIKAWA, ET AL.,	)	
	)	
Defendants.	)	
	)	

**ORDER DENYING PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S ORDER  
DENYING APPOINTMENT OF COUNSEL**

On October 16, 2012, the magistrate judge issued his Order Denying Motion for Appointment of Counsel ("Order"). Plaintiff Michael C. Tierney ("Plaintiff") filed his Objections to Magistrate's Order Denying Appointment of Counsel ("Objections") on October 29, 2012. Defendants did not file a memorandum in opposition. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai'i ("Local Rules"). After careful consideration of the Objections and the relevant legal authority, the Objections are HEREBY DENIED for the reasons set forth below.

**BACKGROUND**

The parties and the Court are familiar with the factual and legal history of this case, and the Court will only discuss the events that are relevant to the review of the Order and the

Objections.

On October 16, 2012, the magistrate judge issued his Order denying Plaintiff's Motion for Appointment of Counsel, finding that Plaintiff failed to present exceptional circumstances justifying the appointment of counsel. In his Objections, Plaintiff argues that he has suffered "severe concussions and head injuries," and is "suffering long-term consequences of brain trauma," and being treated for cancer. Plaintiff argues that such circumstances warrant the appointment of counsel.

**STANDARD**

Pursuant to 28 U.S.C. § 636(b)(1)(A), a district judge may designate a magistrate judge to hear and decide a pretrial matter pending before the court. The decision of the magistrate judge on non-dispositive matters is final. Bhan v. NME Hosp., Inc., 929 F.2d 1404, 1414 (9th Cir. 1991). However, a district judge may reconsider a magistrate's order on these non-dispositive pretrial matters and set aside that order, or any portion thereof, if it is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); LR 74.1; see Rivera v. NIBCO, Inc., 364 F.3d 1057, 1063 (9th Cir. 2004); see also Osband v. Woodford, 290 F.3d 1036, 1041 (9th Cir. 2002).

. . . .

"A decision is 'contrary to law' if it applies an incorrect legal standard or fails to consider an element of the applicable standard." Na Pali Haweo Cmty. Ass'n v. Grande, 252 F.R.D. 672, 674 (D. Haw. 2008); see Hunt v. Nat'l Broadcasting Co., 872 F.2d 289, 292 (9th Cir. 1989) (noting that such failures constitute abuse of discretion).

Hasegawa v. Hawaii, CV No. 10-00745 DAE-BMK, 2011 WL 6258831, at \*1-2 (D. Hawai`i Dec. 14, 2011).

### **DISCUSSION**

At the outset, the Court notes that the standard applicable to an appeal of a magistrate judge's non-dispositive order is highly deferential. In the present case, Plaintiff has failed to establish that the magistrate judge's Order was clearly erroneous or contrary to law. The magistrate judge applied the correct legal standard and did not otherwise abuse his discretion in finding that Plaintiff's medical issues did not constitute "exceptional circumstances" such that appointment of counsel is required. See Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004) ("The decision to appoint sound counsel is within 'the sound discretion of the trial court and is granted only in exceptional circumstances.'"). While this Court has much sympathy for Plaintiff's unfortunate health issues, Plaintiff's statements as to his health in the instant Objections do not assert or establish that the magistrate judge's finding was clearly in error. Because Plaintiff has failed to demonstrate that the magistrate judge's Order was clearly erroneous or contrary to law, the Court DENIES Plaintiff's Objections.

### **CONCLUSION**

On the basis of the foregoing, Plaintiff's Objections

to Magistrate's Order Denying Appointment of Counsel, filed October 29, 2012, are HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, January 18, 2013.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**MICHAEL C. TIERNEY V. LOIS TORIKAWA, ET AL; CIVIL NO. 12-00056**  
**LEK-RLP; ORDER DENYING PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S**  
**ORDER DENYING APPOINTMENT OF COUNSEL**