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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DUKE F. CRANFORD,

Plaintiff,

v.

E.K. McDANIEL, et al.,

Defendants.

Case No. 2:15-cv-02189-GMN-PAL

ORDER

(Mot. Appt. Counsel – ECF No. 24;
Mot. Scheduling Order – ECF No. 27)

This matter is before the court on Plaintiff Duke K. Cranford’s Motion for Appointment of Counsel (ECF No. 24) and Defendants’ Motion for Issuance of Scheduling Order (ECF No. 27). These motions are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice. The court has considered the motions. No response was filed for either motion and the deadline to do so has now expired.

BACKGROUND

Mr. Cranford is a pro se prisoner in the custody of the Nevada Department of Corrections (“NDOC”) at the Northern Nevada Correctional Center. He has received permission to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of Practice. *See* Order (ECF No. 19).

On November 18, 2015, Mr. Cranford commenced this action by filing an IFP Application (ECF No. 1) and complaint. Upon initial review of the complaint, the court issued an Order (ECF No. 6) instructing him to file an amended complaint to correct certain defects in his pleading. Once he did so, *see* Second Am. Compl. (ECF No. 11), the court issued a Screening Order (ECF No. 13) finding that Cranford stated a plausible Eighth Amendment claim of deliberate indifference to a serious medical need against Defendants E.K. McDaniels, Romeo Aranas, B. Stroud, Dr. Leaks, and nurse Molly.

1 This case arises from Mr. Cranford’s allegations, pursuant to 28 U.S.C. § 1983, regarding
2 his treatment while he was incarcerated at the High Desert State Prison (“HDSP”). He alleges that
3 he woke up with a foreign object lodged in his left eye on November 1, 2015. *See* Second Am.
4 Compl. (ECF No. 11); Screening Order (ECF No. 13). The next day, nurse Molly examined his
5 eye but she was unable to remove the object because she did not have the necessary equipment.
6 Cranford filed an emergency grievance and complained to prison administrators about the
7 condition of his left eye. His requests for medical care went unresolved and the object is still in
8 his eye. Mr. Cranford continues to endure unreasonable pain and suffering, and he claims that his
9 vision in his left eye has been irreversibly damaged.

10 The court stayed the case for 90 days to allow the parties an opportunity to settle their
11 dispute through the Inmate Early Mediation Program before the filing of an answer or starting the
12 discovery process. *See* Screening Order (ECF No. 13); Order (ECF No. 15). However, the parties
13 did not reach a settlement and the case was returned to the normal litigation track. *See* Mins. of
14 Proceedings (ECF No. 16). The court therefore entered an Order (ECF No. 19) directing electronic
15 service of the Second Amended Complaint on the Nevada Office of the Attorney General
16 (“Attorney General”) and instructing that a notice be filed with the court indicating the names of
17 the defendants for whom the Attorney General accepts service, and those it does not. *Id.* ¶ 5.

18 On December 9, 2016, the Attorney General accepted service on behalf of Defendants E.K.
19 McDaniels, Romeo Aranas, and Bruce Stroud (the “NDOC Defendants”). *See* Notice Acceptance
20 of Service (ECF No. 20). However, service was not accepted for Defendant Molly Chiello, which
21 prompted the Attorney General to file Chiello’s last known address under seal. *See* Sealed
22 Submission of Last Known Address (ECF No. 21); Notice of Sealed Submission of Last Known
23 Address (ECF No. 22). The NDOC Defendants filed their Answer (ECF No. 23) to the Second
24 Amended Complaint on January 17, 2017.

25 **DISCUSSION**

26 **I. MR. CRANFORD’S MOTION FOR APPOINTMENT OF COUNSEL**

27 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
28 counsel. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (citing *Storseth v. Spellman*, 654

1 F.2d 1349, 1353 (9th Cir. 1981)); *Ivey v. Board of Regents*, 673 F.2d 266 (9th Cir. 1982). Pursuant
2 to 28 U.S.C. § 1915(e)(1), the court may ask an attorney to represent a litigant proceeding *in forma*
3 *pauperis*. *Id.* This statute does not require that the court appoint counsel or authorize the court to
4 direct payment for a litigant’s attorney’s fees, it merely allows the court to request that an attorney
5 represent an indigent litigant on a pro bono basis. *See Mallard v. United States Dist. Ct.*, 490 U.S.
6 296, 304–05 (1989); *United States v. 30.64 Acres of Land*, 795 F.2d 796, 798–804 (9th Cir. 1986).

7 The appointment of counsel is limited to cases presenting exceptional circumstances.
8 *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004); *Aldabe v. Aldabe*, 616 F.2d
9 1089, 1093 (9th Cir. 1980) (per curiam). The word “exceptional” is defined as “out of the ordinary
10 course, unusual,” or “rare.” *See Oxford English Dictionary* (Oxford Univ. Press 2015). In
11 deciding whether to appoint counsel, the court should consider: (1) the likelihood of success of the
12 pro se party’s claims on the merits, and (2) the ability of the party to articulate claims pro se in
13 light of the complexity of the legal issues involved. *Harrington v. Scribner*, 785 F.3d 1299, 1309
14 (9th Cir. 2015); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (finding that
15 neither factor is controlling); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

16 Mr. Cranford’s motion asks the court to appoint counsel because he is not an attorney, he
17 is 63 years old, and his eye sight is failing. Without court-appointed counsel to represent him,
18 Cranford states that defendants will have an unfair advantage due to the foreign object that remains
19 in his left eye. Thus, he argues that the appointment of counsel is in the interests of justice.

20 Here, Mr. Cranford has not established that exceptional circumstances exist to justify the
21 appointment of counsel. The Second Amended Complaint states a colorable Eighth Amendment
22 claim against the NDOC Defendants as well as defendants Chiello and Dr. Leaks. Based on the
23 record, the court is unable to assess the likelihood of success of Cranford’s claim on its merits.
24 However, the court finds that the facts alleged and legal issues raised are not especially complex.
25 Since commencing this action, Mr. Cranford has submitted numerous motions to the court.
26 Despite his medical condition, he has demonstrated sufficient ability to write and articulate his
27 claims. The court appreciates that it is difficult for pro se parties to litigate their claims and that
28 almost every pro se party would benefit from representation by counsel. However, the court cannot

1 require counsel to accept representation on a pro bono basis, and the number of attorneys available
2 to accept a pro bono appointment is very small. The motion is therefore denied.

3 **II. NDOC DEFENDANTS' MOTION FOR SCHEDULING ORDER**


4 This motion asks the court to issue a scheduling order to commence discovery in this case.
5 Pursuant to LR 16-1, this request is granted and a separate scheduling order will be issued.

6 Accordingly,

7 **IT IS ORDERED:**

- 8 1. Plaintiff Duke K. Cranford's Motion for Appointment of Counsel (ECF No. 24) is
9 DENIED without prejudice.
- 10 2. Defendants' Motion for Issuance of Scheduling Order (ECF No. 27) is GRANTED. A
11 separate scheduling order will be issued.

12 Dated this 24th day of April, 2017.

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15 PEGGY A. FEEN
16 UNITED STATES MAGISTRATE JUDGE
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