

1 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
2 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may
3 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
4 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
5 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
6 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
7 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
8 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
9 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show
10 he has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
11 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
12 1101, 1103 (9th Cir. 2004).

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15 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
16 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
17 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development
18 of further facts during litigation. But, if all that was required to establish the complexity of the
19 relevant issues was a demonstration of the need for development of further facts, then
20 practically all cases would involve complex legal issues. *Id.*

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22 Plaintiff maintains that he should be appointed counsel because he has limited
23 knowledge of the law, has mental and personality disorders and suffers from medical issues,
24 including Bell’s Paulsey and arthritis. In support, he attaches an excerpt from “SCC Annual
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1 Review” dated “12.05.05.” *Id.*, pp. 2, 3. However, there is no indication that these conditions
2 affect Plaintiff’s ability to articulate his claims *pro se*.

3 Plaintiff’s lack of legal skills is also not an exceptional circumstances to warrant the
4 appointment of counsel. There is nothing in the motion for counsel presented to the court to
5 indicate that a finding of exceptional circumstances is warranted in this case. While Plaintiff
6 may not have vast resources or legal training, he meets the threshold for a pro se litigant.
7 Concerns regarding investigation and discovery, an absence of legal training and limited access
8 to legal materials are not exceptional factors, but are the type of difficulties encountered by
9 many pro se litigants. There are also numerous avenues of discovery available to the parties
10 through the Federal Rules of Civil Procedure during the litigation process.
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12 Plaintiff filed his complaint *pro se* and he has demonstrated an adequate ability to
13 articulate his claims *pro se*. Plaintiff has not demonstrated that the issues involved in this case
14 are complex or that he has had any difficulties in expressing them. In his complaint, Mr.
15 Davenport claims that he has been denied proper medical care at the SCC. These are not
16 complex issues. Plaintiff has also not shown a likelihood of success on the merits other than
17 his conclusory statements, such as “there has been an inordinate amount of resident’s die here
18 at the SCC;” complaints, made by resident’s, against medical here are numerous.”
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20 Accordingly, Plaintiff’s motion to appoint counsel (ECF No. 16) is **DENIED**. The
21 Clerk is directed to send copies of this Order to Plaintiff.
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23 DATED this 13th day of October, 2010.

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25 Karen L. Strombom
26 United States Magistrate Judge