

MAR 24 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES D. MACIEL,

Plaintiff - Appellant,

v.

ANA RAMIREZ PALMER; et al.,

Defendants - Appellees.

No. 06-17258

D.C. No. CV-02-00473-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

James D. Maciel, a California state prisoner, appeals pro se from the district court's judgment dismissing his civil rights action for non-compliance with the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

06-17258

district court's discovery order. We have jurisdiction under 28 U.S.C. § 1291. We review a district court's dismissal for failure to comply with court orders for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion by dismissing Maciel's action for failure to comply with the discovery order because Maciel had many opportunities to comply but willfully failed to do so, even after the district court warned Maciel that his non-compliance could result in the dismissal of his action. *See id.* at 641-44 (setting forth five factors to be weighed in determining whether to dismiss a claim for failure to comply with court order).

The district court did not abuse its discretion by denying Maciel's motions to stay the proceedings because Maciel provided no justification for a stay, and the district court's assessment of the evidence was not clearly erroneous. *See Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (district court abuses its discretion in denying a stay if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence).

06-17258

The district court did not abuse its discretion by denying Maciel's motions for appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) because Maciel failed to demonstrate exceptional circumstances. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (denial of motion for appointment of counsel is reviewed for an abuse of discretion; setting forth "exceptional circumstances" standard).

The district court did not abuse its discretion by denying Maciel's motion for recusal because Maciel did not allege any bias or prejudice stemming from an extrajudicial source. *See United States v. Martin*, 278 F.3d 988, 1005 (9th Cir. 2002) (denial of recusal motion is reviewed for an abuse of discretion).

Maciel's motion to amend or supplement the conclusion in his opening brief is denied.

AFFIRMED.