

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cole v. California Department of Corrections and Rehabilitation, et
al.

Cole · No. 1:25-cv-00272 GSA (PC) · Decided April 3, 2025

SUMMARY

The United States District Court for the Eastern District of California denies George Lee Cole Jr.’s motion for appointment of counsel in his pro se 42 U.S.C. § 1983 action. The court finds that limited legal resources and lack of legal education do not establish exceptional circumstances, and that Plaintiff has adequately articulated his claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 3, 2025
DOCKET	1:25-cv-00272 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis in a civil-rights action under 42 U.S.C. § 1983, moved for appointment of counsel. The magistrate judge denied the motion.
STANDARD OF REVIEW	The court considered whether exceptional circumstances warranted requesting voluntary counsel under 28 U.S.C. § 1915(e)(1), based on the plaintiff's likelihood of success and ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order

TOPICS

- section 1983
- civil rights
- prisoners rights
- civil procedure

PRACTICE AREAS

- civil rights
- prisoner civil rights
- civil procedure

QUESTIONS PRESENTED

- 1. Whether the plaintiff demonstrated exceptional circumstances warranting a request for voluntary appointment of counsel in his § 1983 action.

HOLDINGS

- 1. The plaintiff failed to meet his burden of demonstrating exceptional circumstances warranting the appointment of counsel at that time; lack of legal education and limited law-library access, without more, did not justify a request for voluntary counsel.

KEY QUOTATIONS

“When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.” (at 1)

FACTUAL BACKGROUND

George Lee Cole, Jr., a former state prisoner proceeding pro se and in forma pauperis, brought a § 1983 civil-rights action. He sought appointed counsel, stating that the prison yard where he was housed lacked a law room or legal clerk and that the prison would not provide legal resources. The court observed that his filings and management of the case demonstrated an adequate ability to articulate his claims.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 action while incarcerated and moved for appointment of counsel. The matter was referred to a United States Magistrate Judge under 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The court had not yet screened the complaint when it denied the motion.

DISPOSITION

other

CASES CITED

- Mallard v. United States District Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

(PC) Cole v. California Department of Corrections and Rehabilitation

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 GEORGE LEE COLE, JR., No. 1:25-cv-00272 GSA (PC)

12 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION

FOR THE APPOINTMENT OF COUNSEL

13 v. (ECF No. 17)

14 CALIFORNIA DEPARTMENT OF

CORRECTIONS AND

15 REHABILITATION, et al., 16 Defendants. 17 18 Plaintiff, a former state prisoner¹ proceeding pro se and in forma pauperis, has filed this 19 civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United 20 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 Plaintiff has filed a motion for the appointment of counsel. ECF No. 17. For the reasons 22 stated below, the motion will be denied.

23 I. MOTION FOR THE APPOINTMENT OF COUNSEL

24 In support of Plaintiff's motion for the appointment of counsel, which was filed while 25 Plaintiff was still incarcerated (see generally ECF No. 17), Plaintiff states that the minimal 26 27 1 On April 2, 2025, a notice of change of address filed by Plaintiff was docketed. ECF No. 19. In it, the new address Plaintiff provides appears to be a residential one indicating that Plaintiff has 28 likely been released from custody. 1 facility yard where he was housed had no law room or legal clerk. Id. In addition, Plaintiff states 2 that the prison will not provide him with any resources. Id.

3 II. DISCUSSION

4 A. Applicable Law 5 District courts lack authority to require counsel to represent indigent people in section 6 1983 cases. See *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional 7 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 8 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. 9 Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional 10 circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as 11 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the 12 legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 13 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional 14 circumstances is on the plaintiff. Id. Circumstances common to many, such as lack of legal 15 education and limited law library access, do not establish exceptional circumstances that warrant 16 a request for voluntary assistance of counsel. 17 B. Analysis 18 Although the Court has yet to screen Plaintiff's complaint in order to determine whether 19 his complaint is likely to be successful on its merits, a cursory review of the pleadings that 20 Plaintiff has filed to date, as well as how he has managed this matter thus far, indicates that 21 Plaintiff is able to articulate his claims with adequate sufficiency. See generally ECF No. 1 22 (complaint). Therefore, having considered the factors under *Palmer*, the Court finds that plaintiff

23 has failed to meet his burden of demonstrating exceptional circumstances warranting the 24 appointment of counsel at this time. 25 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the appointment of 26 counsel (ECF No. 17) is DENIED. 27 IT IS SO ORDERED. 28

1 Dated: April 2, 2025 /s/ Gary S. Austin 2

UNITED STATES MAGISTRATE JUDGE

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