

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Suarez v. Clark

Suarez · No. 1:22-cv-00160-JLT-SAB (PC) · Decided March 8, 2023

SUMMARY

The United States District Court for the Eastern District of California denied Jose Alfredo Suarez’s second motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court found no exceptional circumstances because Suarez had not shown a likelihood of success on the merits and was able to articulate and litigate his claims, and it denied the motion without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 8, 2023
DOCKET	1:22-cv-00160-JLT-SAB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis under 42 U.S.C. § 1983, filed a second motion requesting appointment of counsel. The court considered the motion at an early stage of the civil rights action.
STANDARD OF REVIEW	The court evaluated whether exceptional circumstances warranted requesting voluntary counsel under 28 U.S.C. § 1915(e)(1), considering the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Jose Alfredo Suarez v. Ken Clark, et al.

TOPICS

- civil rights
- prisoners rights
- civil procedure

PRACTICE AREAS

- prisoner civil rights
- civil procedure
- appointment of counsel

QUESTIONS PRESENTED

1. Whether exceptional circumstances warranted the court's request for voluntary appointment of counsel for a pro se incarcerated plaintiff under 28 U.S.C. § 1915(e)(1).
2. Whether the plaintiff's incarceration, limited legal education, limited law-library access, and asserted difficulty litigating established exceptional circumstances.

HOLDINGS

1. A court may request voluntary assistance of counsel for an indigent civil litigant only when exceptional circumstances exist, evaluated by considering both the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues. Suarez did not establish exceptional circumstances.

KEY QUOTATIONS

“However, in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1).” (at 1)

“In determining whether “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.”” (at 1)

“In addition, circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for voluntary assistance of counsel.” (at 2)

FACTUAL BACKGROUND

Suarez is incarcerated, proceeding without counsel, and alleged that he had limited legal knowledge and law-library access and difficulty litigating while imprisoned. He asserted that he could not afford counsel, that a trial might involve conflicting testimony, and that he had made efforts to obtain counsel. The court had previously found that he stated cognizable claims, but at this early stage could not determine that he was likely to succeed on the merits.

PROCEDURAL HISTORY

Suarez filed a prisoner civil rights action and previously sought appointment of counsel. He filed a second motion for appointment of counsel on March 6, 2023. The court denied the motion without prejudice, concluding that exceptional circumstances were not present.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)

- *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989)
- *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8
9 JOSE ALFREDO SUAREZ, Case No. 1:22-cv-00160-JLT-SAB (PC) 10 Plaintiff, ORDER
DENYING PLAINTIFF’S SECOND MOTION FOR APPOINTMENT OF 11 v. COUNSEL 12
KEN CLARK, et al., (ECF No. 49) 13 Defendants. 14 15 Plaintiff Jose Alfredo Suarez is
proceeding pro se and in forma pauperis in this civil 16 rights action filed pursuant to 42 U.S.C. §
1983.

17 Currently before the Court is Plaintiff’s second motion for appointment of counsel, filed 18
March 6, 2023. In seeking appointment of counsel, Plaintiff submits: (1) he is unable to afford 19
counsel; (2) his imprisonment limits his ability to litigate the action; (3) he has limited access to 20
the law library; (4) a trial will likely involve conflicting testimony; (5) he has limited knowledge
21 of the law; (6) he has made repeated efforts to obtain counsel; and (7) he has presented a 22
likelihood of success on the merits.

23 There is no constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 24
F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent plaintiff 25
pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the Southern 26*
District of Iowa, 490 U.S. 296, 298 (1989).

However, in certain exceptional circumstances the 27 Court may request the voluntary assistance
of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525. 1 Without a reasonable method
of securing and compensating counsel, the Court will seek 2 | volunteer counsel only in the most
serious and exceptional cases.

In determining whether 3 | “exceptional circumstances exist, the district court must evaluate both
the likelihood of success 4 | on the merits [and] the ability of the [plaintiff] to articulate his claims
pro se in light of the 5 | complexity of the legal issues involved.” *Id.* (internal quotation marks and
citations omitted). 6 In the present case, the Court does not find the required exceptional
circumstances.

Even 7 | if it assumed that Plaintiff is not well versed in the law and that he has made serious
allegations 8 | which, if proved, would entitle him to relief, his case is not exceptional. The Court
is faced with 9 | similar cases almost daily. While the Court recognizes that Plaintiff is at a
disadvantage due to 10 | his pro se status and his incarceration, the test is not whether Plaintiff
would benefit from the 11 | appointment of counsel.

See *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most 12 | actions require
development of further facts during litigation and a pro se litigant will seldom be 13 | in a position

to investigate easily the facts necessary to support the case.”) The test is whether 14 | exception
circumstances exist and here, they do not.

Although the Court found that Plaintiff has 15 | stated cognizable claims to proceed with the
action, at this early stage of the litigation, the Court 16 | cannot find Plaintiff is likely to succeed
on the merits. In addition, circumstances common to 17 | most prisoners, such as lack of legal
education and limited law library access, do not establish 18 | exceptional circumstances that
would warrant a request for voluntary assistance of counsel.

19 | Finally, based on a review of the record, including Plaintiff's instant motion, the Court that 20 |
Plaintiff is able to clearly articulate his claims and able to adequately litigate this action. 21 |
Accordingly, Plaintiffs second motion for the appointment of counsel is denied, without 22 |
prejudice. 23 24 IT IS SO ORDERED. OF. nf ee 25 | Dated: _ March 7, 2023 UNITED STATES
MAGISTRATE JUDGE 27 28