

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.

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