

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

David Arkeem Evans v. Diaz, et al.

Evans v. Diaz · No. 1:22-cv-00291-KES-BAM (PC) · Decided September 8, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 DAVID ARKEEM EVANS, Case No. 1:22-cv-00291-KES-BAM (PC) 12
Plaintiff, ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL 13 v. (ECF No.
94) 14 DIAZ, et al., 15 Defendants. 16 17 Plaintiff David Arkeen Evans (“Plaintiff”) is a state
prisoner proceeding pro se in this 18 civil rights action pursuant to 42 U.S.C. § 1983.

19 Currently before the Court is Plaintiff’s motion for appointment of counsel, filed 20 September
4, 2025. (ECF No. 94.) Plaintiff asserts that because the Court has issued findings 21 and
recommendations that recommended Defendants’ motion for summary judgment be denied, 22
except for Defendant Bradford, this matter “is now ripe for a jury trial and should so be set.” (Id.

23 at 1.) Plaintiff argues that due to ongoing security issues at the prison where he is housed, the
24 inmate law library “is routinely closed without prior notice making it difficult if not impossible
25 for Plaintiff to research and prepare for a complex trial that is expected to last over 10 days.”
(Id. 26 at 1-2.) He further states that during the thirty days preceding this motion, he has made a
good 27 faith effort to contact, by mail and by phone call, local civil attorneys specializing in civil
rights 28 violations without any having replied or offered representation.

(Id. at 2.) Plaintiff states that he 1 is a layman and has a limited understanding of the law, and
practice and procedure. Plaintiff 2 asserts that given the recent issuance of the findings and
recommendations in this matter, he fears 3 his inexperience with the prosecution of this case in
federal court “will cause him to suffer 4 unnecessarily deprivation of his rights as litigant and will
cause the trial to be unnecessarily with 5 the predictable interruptions his inexperience is sure to
cause.” (Id.)

6 As Plaintiff was previously informed, he does not have a constitutional right to appointed 7
counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on 8
other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to 9
represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist.*

Court for the S. Dist. 10 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
circumstances the court may 11 request the voluntary assistance of counsel pursuant to section
1915(e)(1). *Rand*, 113 F.3d at 12 1525. 13 Without a reasonable method of securing and

compensating counsel, the Court will seek 14 volunteer counsel only in the most serious and exceptional cases.

In determining whether 15 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on 16 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the 17 complexity of the legal issues involved.” Rand, 113 F.3d at 1525 (internal quotation marks and 18 citations omitted). 19 The Court has considered Plaintiff’s request, but it does not find the required exceptional 20 circumstances.

Plaintiff’s case is not exceptional. This Court is faced with similar cases filed by 21 prisoners proceeding pro se with no legal experience and limited access to legal research 22 materials almost daily. These prisoners also must make complex legal arguments and prosecute 23 claims without the assistance of counsel, including at trial.

Moreover, the findings and 24 recommendations regarding Defendants’ motion for summary judgment currently remain 25 pending, and no trial has been set in this action. 26 Furthermore, the filing fee has been paid, and Plaintiff is not proceeding in forma 27 pauperis in this action.

The Court is not aware of any authority that would allow the appointment 28 of counsel for a litigant in a civil action who is not proceeding in forma pauperis. 1 Finally, based on a review of the record in this case, the Court does not find that Plaintiff 2 cannot adequately articulate his claims.

As demonstrated in the instant motion, Plaintiff is able to 3 prepare and file documents clearly setting forth his contentions, without assistance from counsel 4 or an interpreter. Indeed, given the advanced stage of this action, it is evident that Plaintiff is able 5 to articulate his claims in light of the complexity of the legal issues involved. 6 For the foregoing reasons, Plaintiff’s motion for appointment of counsel, (ECF No. 94), is 7 HEREBY DENIED, without prejudice.

8 IT IS SO ORDERED. 9 10 Dated: September 5, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28