

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Lomeli v. Pfeiffer

Lomeli · No. 1:22-cv-00079 GSA (PC) · Decided March 20, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Marcos Lomeli’s motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court held that indigence and lack of income did not establish exceptional circumstances warranting voluntary appointment of counsel and directed the Clerk to update the docket to reflect Lomeli’s change of address.

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	March 20, 2025
DOCKET	1:22-cv-00079 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	In a pending prisoner civil-rights action under 42 U.S.C. § 1983, the pro se plaintiff moved for appointment of counsel and notified the court of a change of address.
STANDARD OF REVIEW	The appointment of counsel is discretionary; the court evaluates whether exceptional circumstances exist by considering the plaintiff's likelihood of success on the merits and ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Marcos Lomeli v. C. Pfeiffer, et al.

TOPICS

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

PRACTICE AREAS

- Civil procedure
- Prisoner civil rights
- Appointment of counsel

QUESTIONS PRESENTED

1. Whether plaintiff's indigency, inability to afford an attorney, and lack of income established exceptional circumstances warranting appointment of counsel in his § 1983 action.
2. Whether the docket should be updated to reflect plaintiff's changed address and the substance of his filing.

HOLDINGS

1. A prisoner is not entitled to appointment of counsel in a § 1983 action merely because he is indigent or unable to afford an attorney; appointment may be requested only when exceptional circumstances are demonstrated.
2. The Clerk was directed to update the description of the filing and the case caption on the docket to reflect plaintiff's notice and new address.

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)

“Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel.” (at 1)

FACTUAL BACKGROUND

Marcos Lomeli is a state prisoner proceeding without counsel in a civil-rights action under 42 U.S.C. § 1983. He asserted that he was indigent, unable to afford counsel, and had no monthly income. He also notified the court that he was no longer incarcerated at Kern Valley State Prison and was then at California State Prison—Los Angeles County.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se and having paid the filing fee, filed a § 1983 action and then moved for appointment of counsel based on indigency and lack of income. The motion also notified the court that plaintiff had been transferred to another California prison. The magistrate judge denied the motion without prejudice and directed the Clerk to update the docket description and case-caption address.

DISPOSITION

other

CASES CITED

- Mallard v. United States Dist. 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

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MARCOS LOMELI, No. 1:22-cv-00079 GSA (PC) 12 Plaintiff, ORDER
DENYING PLAINTIFF’S MOTION FOR THE APPOINTMENT OF COUNSEL 13 v. (ECF No.
14 at 1) 14 C. PFEIFFER, et al., ORDER DIRECTING CLERK OF COURT TO 15 Defendants.
UPDATE DOCKET ENTRY AND PLAINTIFF’S ADDRESS ON THE DOCKET 16 (See ECF
No. 14 at 3) 17 18 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action
seeking relief 19 under 42 U.S.C. § 1983.

The matter was referred to a United States Magistrate Judge pursuant to 20 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. Plaintiff has paid the filing fee. 21 Plaintiff has filed a motion for the
appointment of counsel. ECF No. 14 at 1-2.

In it, 22 Plaintiff also informs the Court that his address has changed. Id. at 3. 23 For the reasons
stated below, the motion for the appointment of counsel will be denied. In 24 addition, the Clerk of
Court will be directed to update Plaintiff’s address on the case caption of 25 the docket. 26 I.
APPOINTMENT OF COUNSEL REQUEST; CHANGE OF ADDRESS NOTICE 27 In support
of Plaintiff’s motion for the appointment of counsel, he states that he is 28 1 indigent and unable to
afford to pay for counsel.

ECF No. 14 at 1. He also states that he has no 2 income each month. Id. Plaintiff requests that
counsel be appointed so that his interests can be 3 protected. Id. 4 Plaintiff’s motion also informs
the Court that he is no longer incarcerated at Kern Valley 5 State Prison. See ECF No. 14 at 3.

In it, he writes that he is now incarcerated at “California State 6 Prison – LA County.” Id. 7 II.
DISCUSSION 8 A. Applicable Law 9 District courts lack authority to require counsel to represent
indigent prisoners in section 10 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296,
298 (1989).

In exceptional 11 circumstances, the court may request an attorney to voluntarily represent such a
plaintiff. See 28 12 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);
Wood v. 13 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether
“exceptional 14 circumstances” exist, the court must consider plaintiff’s likelihood of success on
the merits as 15 well as the ability of the plaintiff to articulate his claims pro se in light of the
complexity of the 16 legal issues involved.

Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 17 abuse discretion in
declining to appoint counsel). The burden of demonstrating exceptional 18 circumstances is on the
plaintiff. Id. Circumstances common to most prisoners, such as lack of 19 legal education and

limited law library access, do not establish exceptional circumstances that 20 warrant a request for voluntary assistance of counsel.

21 B. Analysis 22 As stated above, a prisoner is not entitled to the appointment of counsel simply because he 23 is indigent. Consequently, neither Plaintiff's inability to afford to pay for an attorney, nor his lack 24 of income constitute exceptional circumstances that warrant the appointment of counsel.

For this 25 reason, having considered the factors under Palmer, the Court finds that Plaintiff has failed to 26 meet his burden of demonstrating exceptional circumstances warranting the appointment of 27 counsel and his request will be denied.

As for Plaintiff's notice that his address has changed (see 28 ECF No. 14 at 3), the Clerk of Court will be ordered to update the case caption of the docket to 1 reflect this. 2 Accordingly, IT IS HEREBY ORDERED that: 3 1. Plaintiff's motion for the appointment of counsel (ECF No. 14) is DENIED without 4 prejudice, and 5 2 Consistent with Plaintiff's notice provided in his motion for the appointment of 6 counsel (see ECF No. 14 at 3), the Clerk of Court shall: 7 a. CHANGE the description at ECF No. 14 so that it reads "Motion to Appoint 8 Counsel and Notice of Change of Address," and 9 b. UPDATE the case caption of the docket so that it shows the new address that 10 Plaintiff has provided.

See ECF No. 14 at 3. 11 12 IT IS SO ORDERED. 13 14 Dated: March 20, 2025 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27 28