

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.

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 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. 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