

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

Randy Joe Rocha v. Atlee M. Monroe, et al.

Rocha v. Monroe · No. 1:24-cv-00446 KES GSA (PC) · Decided September 10, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 RANDY JOE ROCHA, No. 1:24-cv-00446 KES GSA (PC) 12 Plaintiff,
ORDER DISREGARDING PLAINTIFF’S MOTION FOR LATE FILING 13 v. (ECF No. 4) 14
ATLEE M. MONROE, et al., ORDER DENYING PLAINTIFF’S MOTION 15 Defendants. FOR
THE APPOINTMENT OF COUNSEL 16 (ECF No. 3) 17 ORDER ACKNOWLEDGING
PLAINTIFF’S NOTICE TO PROCEED WITH THIS CASE 18 (ECF No. 11) 19 20 Plaintiff, a
state prisoner proceeding pro se and in forma pauperis, has filed this civil 21 rights action seeking
relief under 42 U.S.C. § 1983.

The matter was referred to a United States 22 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 23 Before this Court are Plaintiff’s motion for late filing (ECF No. 4); his
motion for the 24 appointment of counsel (ECF No. 3), and a “notice” which requests that he be
able to proceed 25 with this case (see ECF No. 11).

For the reasons stated below, Plaintiff’s motion for late filing 26 will be disregarded, his motion
for the appointment of counsel will be denied, and finally, the 27 Court will acknowledge
Plaintiff’s “notice” to proceed with this case. 28 1 I. MOTION FOR LATE FILING 2 A.
Plaintiff’s Motion 3 On April 15, 2024, the same day that Plaintiff’s complaint was docketed, the
instant 4 motion for late filing was docketed.

See ECF No. 4. At the time that Plaintiff filed the document, 5 he was incarcerated at Salinas
Valley State Prison. See ECF No. at 1. 6 In the motion, Plaintiff discusses how he filed a
grievance with the Office of Appeals on 7 January 24, 2024, and he claims that a response to the
appeal was due on March 25, 2024. Id. at 8 1.

The document goes on to mention how Plaintiff sent letters to the warden of Folsom State 9
Prison – one J. Tuggle – which questioned how he came to his findings. Id. He states that as of 10
April 9, 2024, he had not received a response. Id. Plaintiff further states that he sent letters and 11
an inmate request to “S.A.T.F. Prison Corcoran State Prison” which requested evidence and 12
reports of their investigation.

Id. However, as of April 9, 2024, he had not received any response 13 from “S.A.T.F. Corcoran
State Prison.” Id. 14 B. Discussion 15 This motion will be disregarded as violative of Federal Rule

of Civil Procedure 16 7(b)(1)(B)-(C). Specifically, it is unclear why Plaintiff has filed this motion other than requesting 17 “a late filing complaint”.

However, Plaintiff’s complaint has in fact been filed. Given this, the 18 Court will disregard the motion. 19 II. MOTION FOR THE APPOINTMENT OF COUNSEL 20 A. Plaintiff’s Motion 21 Plaintiff has also filed a motion for the appointment of counsel. ECF No. 3.

In support of 22 it, Plaintiff states in part that he is unable to afford counsel; that the issues in his case are 23 complex; that he has extremely limited access to the law library; that he has a medical condition 24 that makes it more difficult for him to write out paperwork. *Id.* at 1. 25 B. Applicable Law 26 District courts lack authority to require counsel to represent indigent prisoners in section 27 1983 cases.

Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional 28 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 1 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. 2 Housewright*, 900 F.2d 1332,1335-36 (9th Cir. 1990). When determining whether “exceptional 3 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as 4 well as the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the 5 legal issues involved.

Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 6 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional 7 circumstances is on the plaintiff. *Id.* Circumstances common to most prisoners, such as lack of 8 legal education and limited law library access, do not establish exceptional circumstances that 9 warrant a request for voluntary assistance of counsel.

10 C. Discussion 11 Plaintiff’s motion for the appointment of counsel will be denied. To date, Plaintiff has 12 been able to state his claims in a satisfactory manner that the Court can understand. Specifically, 13 he has filed a twenty-six-page, nine claim complaint that is legible and that can be understood. 14 Because the complaint has not yet been screened, the Court is unable to make a determination as 15 to whether Plaintiff is likely to succeed on the merits of this case.

However, based on the general 16 content and state of Plaintiff’s complaint, having considered the factors under *Palmer*, the Court 17 does not find that exceptional circumstances exist which warrant the appointment of counsel at 18 this time. 19 III. NOTICE TO PROCEED WITH CASE 20 Plaintiff has also filed a notice to proceed in this Court. ECF No. 11.

The notice was 21 docketed on April 25, 2024. See *id.* The notice simply informs the Court that Plaintiff would like 22 the Court to proceed with his complaint. *Id.* 23 Although Plaintiff’s notice is not a proper motion, the Court herein formally 24 acknowledges its filing.

In response, Plaintiff is informed that his complaint will be screened in due course. 26 Accordingly, IT IS HEREBY ORDERED that: 27 1. Plaintiff's motion for late filing (ECF No. 4) is DISREGARDED as violative of 28 Federal Rule of Civil Procedure 7(b)(1)(B)-(C); 1 2. Plaintiff's motion for the appointment of counsel (ECF No. 3) is DENIED, and 2 3.

The Court hereby ACKNOWLEDGES Plaintiff's notice requesting that the Court with 3 his case (ECF No. 11). 4 Plaintiff is informed that his complaint will be screened in due course. 5 IT IS SO ORDERED. 6 7 Dated: September 10, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28