

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

Alfred Arista v. Michael Feleppa

Arista · No. 1:22-cv-00240 KES GSA (PC) · Decided March 17, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Plaintiff Alfred Arista's motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court held that Plaintiff had not demonstrated exceptional circumstances, considering his ability to articulate his claims and litigate the case pro se.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ALFRED ARISTA, No. 1:22-cv-00240 KES GSA (PC) 12 Plaintiff,
ORDER DENYING MOTION FOR THE APPOINTMENT OF COUNSEL 13 v. (ECF No. 51)
14 MICHAEL FELEPPA, 15 Defendant. 16 17 Plaintiff, a state prisoner proceeding pro se and in
forma pauperis, has filed this civil 18 rights action seeking relief under 42 U.S.C. § 1983.

The matter was referred to a United States 19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 20 Plaintiff has filed a motion for the appointment of counsel. ECF No.
51. For the reasons 21 stated below, the motion will be denied. 22 I. MOTION FOR THE
APPOINTMENT OF COUNSEL 23 In support of Plaintiff's motion for the appointment of
counsel, Plaintiff states that he 24 lacks knowledge of civil law, and that the Office of the Attorney
General is taking advantage of 25 his lack of legal knowledge and misleading him.

See ECF No. 51 at 2. Plaintiff also states that it 26 has been difficult to get into the prison law
library because it is only open two days a week. Id. at 27 2-3. In sum, Plaintiff wants counsel to be
appointed "so that [he doesn't] mess this case up." Id. 28 at 3 (brackets added). 1 II.
DISCUSSION 2 A. Applicable Law 3 District courts lack authority to require counsel to represent
indigent prisoners in section 4 1983 cases.

Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional 5 circumstances,
the court may request an attorney to voluntarily represent such a plaintiff. See 28 6 U.S.C. §
1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. 7 Housewright, 900
F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional 8 circumstances"
exist, the court must consider plaintiff's likelihood of success on the merits as 9 well as the ability
of the plaintiff to articulate his claims pro se in light of the complexity of the 10 legal issues
involved.

Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 11 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional 12 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of 13 legal education and limited law library access, do not establish exceptional circumstances that 14 warrant a request for voluntary assistance of counsel.

15 B. Analysis 16 Plaintiff's motion will be denied. The fact that Plaintiff has been able to file a complaint 17 with viable claims, which have been served on Defendant, indicates that there is a possibility that 18 Plaintiff will be successful litigating this case on its merits.

In addition, since Plaintiff filed this 19 case in 2022, he has successfully litigated it filing timely responses when ordered by the Court, as 20 well as multiple independent unsolicited filings, many of which the Court recently addressed. 21 See, e.g., ECF Nos. 37-38, 42-43, 45-47. 22 For these reasons, having considered the factors under Palmer, the Court finds that 23 Plaintiff has failed to meet his burden of demonstrating exceptional circumstances warranting the 24 appointment of counsel at this time.

25 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the appointment of 26 counsel (ECF No. 51) is DENIED. 27 28 1 IT IS SO ORDERED. 2 3 Dated: March 16, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28