

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

Benjamin Justin Brownlee v. J. Burnes, et al.

Case No. 1:23-cv-00376-JLT-HBK (PC) (E.D. Cal. Oct. 24, 2025) · No. 1:23-cv-00376-JLT-HBK (PC) ·

Decided October 24, 2025

OPINION

Burnes

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 BENJAMIN JUSTIN BROWNLEE, Case No. 1:23-cv-00376-JLT-HBK (PC) 12 Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION

13 v. FOR APPOINTMENT OF COUNSEL

14 J. BURNES, et al., (Doc. No. 78) 15 Defendant. 16 17 Pending before the Court is Plaintiff’s
motion to appoint counsel. (Doc. No. 78 18 “Motion”). Plaintiff seeks appointment of counsel
because (1) Plaintiff cannot afford legal 19 representation, (2) Plaintiff’s incarceration limits their
ability to litigate, (3) this case will likely 20 involve conflicting testimony that counsel would
better present, (4) Plaintiff has attempted to 21 obtain counsel and has been unsuccessful (5)
Plaintiff has a physical and learning disability, (6) 22 Plaintiff believes this case is complex, (7)
Plaintiff cannot access the law library because they do 23 not have a tablet, and (8) Plaintiff does
not have a right thumb which limits the ability to write. 24 (See *id.*). For the reasons set forth
below, the Court denies Plaintiff’s Motion. 25 The United States Constitution does not require
appointment of counsel in civil cases. See 26 *Lewis v. Casey*, 518 U.S. 343, 354 (1996)
(explaining *Bounds v. Smith*, 430 U.S. 817 (1996), did 27 not create a right to appointment of
counsel in civil cases). Under 28 U.S.C. § 1915, this court 28 has discretionary authority to
appoint counsel for an indigent to commence, prosecute, or defend 1 a civil action. See 28 U.S.C.
§ 1915(e)(1) (stating the court has authority to appoint counsel for 2 people unable to afford
counsel); see also *United States v. McQuade*, 519 F.2d 1180 (9th Cir. 3 1978) (addressing relevant
standard of review for motions to appoint counsel in civil cases) (other 4 citations omitted).
However, motions to appoint counsel in civil cases are granted only in 5 “exceptional
circumstances.” *Id.* at 1181. The court may consider many factors to determine if 6 exceptional
circumstances warrant appointment of counsel including, but not limited to, proof of 7 indigence,
the likelihood of success on the merits, and the ability of the plaintiff to articulate his 8 or her
claims pro se in light of the complexity of the legal issues involved. *Id.*; see also *Rand v.* 9
Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds on reh’g en 10

banc, 154 F.2d 952 (9th Cir. 1998). 11 Plaintiff has not met the “burden of demonstrating exceptional circumstances.” Jones v. 12 Chen, 2014 WL 12684497, at *1 (E.D. Cal. Jan. 14, 2014). First, Plaintiff’s indigence does not 13 qualify “as an exceptional circumstance in a prisoner civil rights case.” Montano v. Solomon, 14 2010 WL 2403389, at *2 (E.D. Cal. June 11, 2010); see also Callender v. Ramm, 2018 WL 15 6448536, at *3 (E.D. Cal. Dec. 10, 2018). Nor is Plaintiff’s inability to find counsel “a proper 16 factor for the Court to consider in determining whether to request counsel.” Howard v. Hedgpeth, 17 2010 WL 1641087, at *2 (E.D. Cal. Apr. 20, 2010). Plaintiff’s first amended complaint was 18 allowed to proceed on Eighth Amendment excessive use of force claims against Defendants 19 Burnes, Rivera, Rodriguez, and Flores, Eighth Amendment sexual assault claim against 20 Defendants Rivera and Rodriguez, and Eighth Amendment failure to intervene claim against 21 Defendant Flores. (Doc. No. 23 at 1). Contrary to Plaintiff’s assertion, the Court does not find 22 that the legal issues are “so complex that due process violations will occur absent the presence of 23 counsel.” Bonin v. Vasquez, 999 F.2d 425, 428–29 (9th Cir. 1993). 24 Plaintiff’s purported lack of general knowledge of the law and or ability to litigate a case 25 are common challenges faced by pro se litigants but do not warrant appointment of counsel. 26 Siglar v. Hopkins, 822 F. App’x 610, 612 (9th Cir. 2020) (denying appointment of counsel 27 because the plaintiff’s “circumstances were not exceptionally different from the majority of the 28 challenges faced by pro se litigants.”). Nothing in the record suggests that Plaintiff lacks the 1 ability to competently litigate this case. Plaintiff been litigating this action since March 3, 2023 2 without counsel and the Court has not had trouble understanding Plaintiff’s arguments or 3 requests. (See docket). 4 Challenges conducting discovery and preparing for trial “are ordinary for prisoners 5 pursuing civil rights claim” and cannot form the basis for appointment of counsel. Courtney v. 6 Kandel, 2020 WL 1432991, at *1 (E.D. Cal. Mar. 24, 2020). Plaintiff states that counsel is 7 needed to interview witnesses, but the inability to contact or interview witnesses will not render a 8 matter sufficiently complex to warrant the appointment of counsel. See Wilborn v. Escalderon, 9 789 F.2d 1328, 1331 (9th Cir. 1986); Arellano v. Sedighi, No. 15-cv-02059-AJB-BGS, 152020 10 WL 5877832, at *47 (S.D. Cal. Oct. 1, 2020) (denying appointment of counsel to help locate 11 witnesses no longer housed at same prison as plaintiff); Trueblood v. Cappola, No. 3:19-cv- 12 05816-RBL-JRC, 2020 WL 1929265, at *2 (W.D. Wash. Apr. 21, 2020). Plaintiff’s complaint 13 regarding limitations in accessing the law library due to their confinement do not warrant 14 appointment of counsel. See Siglar v. Hopkins, 822 F. App’x 612.; see also Springfield v. Khalit, 15 2018 WL 5980155, at *3 (E.D. Cal. Nov. 14, 2018) (“[p]risoners have a right to meaningful 16 access to the courts, but there is no absolute right to use a prison law library.”) (citing Lewis v. 17 Casey, 518 U.S. 343, 346 (1996)). To the extent needs additional time to research any matters he 18 may seek an extension of time, which the Court liberally grants to pro se litigants. Further, 19 Plaintiff appears to want an attorney to assist in conducting discovery, but all discovery deadlines 20 besides expert discovery have passed. (See Doc. No. 75). 21 While Plaintiff states the disability of not having a right thumb makes it difficult

to write, 22 a review of the pleadings filed by Plaintiff reveals no illegible filings or prior difficulty 23 prosecuting this case. See e.g, *Brown v. Reif*, 2019 WL 989874, at *2 (E.D. Cal. Mar. 1, 2019) 24 (denying appointment of counsel where the plaintiff's filing demonstrate ability to properly 25 litigate case despite mental illness). Plaintiff claims the American with Disability Act ("ADA") 26 requires the Court to appoint counsel. However, the ADA does not provide a basis to appoint 27 counsel in this case. "[W]hile the Americans with Disabilities Act (ADA) requires state courts to 28 make disability accommodations, the ADA does not apply to federal courts." *Roman v. Jefferson* 1 | at Hollywood LP, 495 F. App'x 804, 806 (9th Cir. 2012); see also 42 U.S.C. § 1213101)(A) 2 | (defining "public entity" as "any State or local government" and an "instrumentality of a State or 3 | States or local government"). As a result, appointment of counsel is not mandated under the 4 | ADA. 5 To date, Plaintiff has adequately presented their claims to the court, despite their stated 6 | disabilities. For these reasons, the court does not find the required exceptional circumstances. 7 Accordingly, it is ORDERED: 8 Plaintiff's motion to appoint counsel (Doc. No. 78) is DENIED. 9 Dated: _ October 24, 2025 Wile. Th fareh Zack

11 HELENA M. BARCH-KUCHTA

UNITED STATES MAGISTRATE JUDGE

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