

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Trevino v. Jimenez

Trevino · No. 2:21-cv-1415-DC-JDP (P) · Decided April 17, 2025

SUMMARY

The United States District Court for the Eastern District of California denies Robert Trevino’s motion to appoint counsel in his First Amendment access-to-courts action. The magistrate judge recommends denying Trevino’s motion to stay, construed as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), and recommends that he file an opposition to the pending motion for summary judgment within fourteen days of any order adopting the recommendations. The findings and recommendations were issued on April 16, 2025.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 17, 2025
DOCKET	2:21-cv-1415-DC-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for appointment of counsel and to stay the proceedings. The court construed the motion to stay as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), denied the motion to appoint counsel, and recommended denial of reconsideration and an order requiring plaintiff to oppose the pending motion for summary judgment.
STANDARD OF REVIEW	For appointment of counsel, the court evaluated the likelihood of success on the merits and the plaintiff's ability to articulate his claims pro se in light of the complexity of the legal issues. For reconsideration under Rule 60(b), relief requires a showing of mistake, surprise, or excusable neglect; newly discovered evidence; fraud; a void judgment; satisfaction or discharge of the judgment; or extraordinary circumstances justifying relief.

PRECEDENTIAL VALUE

Nonprecedential magistrate judge order and findings and recommendations; recommendation subject to review by the assigned district judge.

TOPICS

motion for reconsideration

summary judgment

civil procedure

prisoners rights

first amendment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his prisoner civil-rights action.
2. Whether plaintiff's motion to stay, construed as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), established any ground for relief from the prior denial of substitution.
3. Whether plaintiff should receive additional discovery or an extension to respond to the pending motion for summary judgment.

HOLDINGS

1. Appointment of counsel was unwarranted because plaintiff did not show exceptional circumstances; he appeared capable of representing himself and his allegations were not unusually complex.
2. Plaintiff's motion to stay, construed as a motion for reconsideration, should be denied because he failed to establish any Rule 60(b) ground and merely repeated arguments previously rejected.
3. Because substitution was recommended for denial, plaintiff's request for additional discovery upon substitution should also be rejected, and plaintiff should be directed to respond to the pending summary-judgment motion within fourteen days after any order adopting the recommendations.

KEY QUOTATIONS

"However, without a means to compensate counsel, I will seek volunteer counsel only in exceptional circumstances." (at 1)

"A motion for reconsideration should not be used to re-assess arguments that have already been raised and rejected." (at 2)

FACTUAL BACKGROUND

Plaintiff is incarcerated and proceeding pro se in a First Amendment access-to-the-courts action. Defendant Burke died, and plaintiff made a late request to substitute a successor, which the court previously denied. Plaintiff argued that his imprisonment, lack of legal knowledge, and good-faith efforts to substitute a successor justified appointment of counsel and reconsideration, but the court found his allegations were not especially complex and that his arguments largely repeated contentions previously rejected.

PROCEDURAL HISTORY

Robert Trevino brought a prisoner civil-rights action alleging that Burke and Jimenez violated his First Amendment right of access to the courts. During the case, the court denied plaintiff's motion to compel, refused to issue a subpoena, denied a motion to amend, and denied a late motion to substitute a successor for deceased defendant Burke. Plaintiff then sought a stay and appointment of counsel. The magistrate judge denied appointment of counsel and issued findings and recommendations recommending denial of the stay/reconsideration motion; the parties were advised that they could object within fourteen days.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. U.S. District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)
- Sch. Dist. No. LI, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
- United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)