

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Drake v. Gonzales

Drake · No. 1:17-cv-01500-KES-SAB (PC) · Decided August 12, 2025

SUMMARY

The United States District Court for the Eastern District of California denied, without prejudice, pro se plaintiff Sam Drake’s motion for appointment of counsel to represent him at a settlement conference in his 42 U.S.C. § 1983 action. The court found that the record did not establish exceptional circumstances warranting appointment of counsel and noted that Drake had adequately articulated and litigated his claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 12, 2025
DOCKET	1:17-cv-01500-KES-SAB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis in a 42 U.S.C. § 1983 civil rights action, moved for appointment of pro bono counsel to represent him at a settlement conference.
STANDARD OF REVIEW	The court evaluated whether exceptional circumstances warranted requesting voluntary counsel by considering 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.
PRECEDENTIAL VALUE	Unknown; district court order denying motion for appointment of counsel without prejudice
PARTIES	Sam Drake v. M. Gonzales

TOPICS

- civil rights
- section 1983
- prisoners rights
- civil procedure

PRACTICE AREAS

civil rights

prisoner civil rights

pro bono counsel

QUESTIONS PRESENTED

1. Whether the court should request or appoint pro bono counsel for a pro se prisoner plaintiff under 28 U.S.C. § 1915(e)(1) based on alleged communication impairments and the circumstances of the case.

HOLDINGS

1. Appointment of counsel was not warranted because Plaintiff failed to establish exceptional circumstances. The court found that his impairment did not prevent him from litigating pro se and that the record did not establish a sufficient likelihood of success or complexity requiring counsel.

KEY QUOTATIONS

“In determining whether “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.” (at 1)

“Accordingly, Plaintiffs motion for appointment of counsel is DENIED, without prejudice.” (at 2)

FACTUAL BACKGROUND

Sam Drake was litigating a prisoner civil rights action pro se and in forma pauperis. He sought counsel for an upcoming settlement conference, asserting that mild dyslogia and a communication-related disability impaired his ability to litigate. The court found that documentation from 2012 showed effective communication and that Drake's filings demonstrated an ability to articulate and litigate his claims.

PROCEDURAL HISTORY

The action was pending in the Eastern District of California and was set for a jury trial and settlement conference. Plaintiff moved for appointment of counsel. The court denied the motion without prejudice, concluding that exceptional circumstances had not been shown.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 SAM DRAKE, No. 1:17-cv-01500-KES-SAB (PC) 12 Plaintiff, ORDER

DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL, 13 v. WITHOUT PREJUDICE 14 M, GONZALES, (ECF No. 158) 15 Defendant. 16 17 Plaintiff Sam Drake is proceeding pro se and in forma pauperis in this civil rights action 18 filed pursuant to 42 U.S.C. § 1983.

This case is currently set for jury trial on November 4, 2025, 19 and a settlement conference is scheduled on October 2, 2025. 20 Currently before the Court is Plaintiff's motion for appointment of counsel. (ECF No. 21 158.) Plaintiff seeks appointment of pro bono counsel to represent him at the settlement 22 conference. (Id.) 23 Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v. 24 Rowland*, 113 F.3d 1520, 1525 (9th Cir.

1997), and the court cannot require any attorney to 25 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for 26 the Southern District of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional 27 circumstances the court may request the voluntary assistance of counsel pursuant to section 28 1915(e)(1). *Rand*, 113 F.3d at 1525. ee nnn en ne nnn nn nn nn on nn nnn nnn nn ns I OE 1 Without a reasonable method of securing and compensating counsel, the Court will seek 2 | volunteer counsel only in the most serious and exceptional cases.

In determining whether 3 | "exceptional circumstances exist, the district court must evaluate both the likelihood of success 4 | on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the 5 | complexity of the legal issues involved." *Id.* (internal quotation marks and citations omitted). 6 In the present case, the Court does not at this time find the required exceptional 7 | circumstances.

Plaintiff argues that appointment of counsel is warranted because he suffers from 8 | mild Dyslogia. Although the documentation attached to Plaintiff's motion reflects that in April 9 | 2012, it was noted that Plaintiff was identified with a disability/communication issue, and a staff 10 || assistance was assisted from the classification committee hearing, "[e]ffective communication 11 | was achieved by speaking slowly and clearly in English" and Plaintiff "reiterated in his own 12 | words what was explained." (ECF No. 158, Ex. D.)

The documentation attached to Plaintiffs 13 | motion, dated over 13 years ago, fails to establish that his impairments constitute an exceptional 14 | circumstance preventing him from litigating this action pro se. Further, a review of Plaintiffs 15 | filings to date reflects that, despite any mild Dyslogia, Plaintiff has been able to articulate his 16 | claims and litigate this action, including filing a pretrial statement and motion for attendance of 17 | incarcerated witnesses, among numerous other filings.

(ECF Nos. 150, 151.) In addition, the 18 | Fresno Division of this Court has a very limited number of available pro bono counsel to 19 | represent inmates in 1983 actions. However, Plaintiff is free

to seek counsel on his own and if 20 | counsel has agreed to represent him in this case counsel may contact Sujean Park for assistance in 21 | arranging appointment.

Accordingly, Plaintiffs motion for appointment of counsel is DENIED, 22 | without prejudice. 23
24 IT IS SO ORDERED. OF. ee 25 | Dated: _ August 12, 2025 STANLEY A. BOONE 26 United
States Magistrate Judge 27 28