

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.

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 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