

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Avalos v. Kirchen-Rolph

Avalos · No. 1:21-cv-00084-KES-CDB (PC) · Decided September 4, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Plaintiff Vincent Johnny Avalos’s motion to appoint counsel in his 42 U.S.C. § 1983 civil rights action. The court found no exceptional circumstances because the merits had not yet been evaluated, Plaintiff could articulate his claims, and the issues were not unusually complex; it also advised that any retained attorney must comply with local admission and appearance requirements.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Kirk E. Sherriff
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 4, 2025
DOCKET	1:21-cv-00084-KES-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se and in forma pauperis in a 42 U.S.C. § 1983 action, moved for appointment of counsel. The court denied the motion.
STANDARD OF REVIEW	The court applied the discretionary exceptional-circumstances standard under 28 U.S.C. § 1915(e)(1), evaluating the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Vincent Johnny Avalos v. Sara L. Kirchen-Rolph, et al.

TOPICS

- civil procedure
- section 1983
- prisoners rights
- due process
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether exceptional circumstances warranted the court's request for voluntary counsel under 28 U.S.C. § 1915(e)(1).
2. Whether Plaintiff's indigence, incarceration, anticipated discovery and trial needs, alleged complexity of his claims, or purported private legal-services contract justified appointment or court funding of counsel.
3. Whether Plaintiff's purported retained counsel could represent him without admission and a notice of appearance under the Eastern District of California's Local Rules.

HOLDINGS

1. A plaintiff does not have a constitutional right to appointed counsel in a § 1983 action.
2. Appointment or voluntary request for counsel requires exceptional circumstances, determined by evaluating both the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues.
3. Indigence, incarceration, anticipated discovery, the possibility that counsel would present evidence or cross-examine witnesses more effectively, and the ordinary complexity of Plaintiff's Fourth, Eighth, and Fourteenth Amendment claims did not constitute exceptional circumstances.
4. The court could not require an attorney to represent Plaintiff under § 1915(e)(1), and Plaintiff cited no authority permitting the court to underwrite fees for a privately retained attorney.

KEY QUOTATIONS

“In determining whether “exceptional circumstances exist, a 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 2)

“The test is not whether Plaintiff would benefit from the appointment of counsel; the test is whether exceptional circumstances exist.” (at 5)

“Accordingly, it is hereby ORDERED that Plaintiff's motion for appointment of counsel (Doc. 41) is DENIED.” (at 6)

FACTUAL BACKGROUND

Vincent Johnny Avalos is a state prisoner proceeding pro se and in forma pauperis in a civil-rights action under 42 U.S.C. § 1983. He sought appointment of counsel based on indigence, incarceration, alleged complexity of the issues, and the anticipated need to present evidence and cross-examine witnesses at trial. He also represented that he had signed a legal-services contract with attorney Royal DL Bond.

PROCEDURAL HISTORY

Plaintiff filed a second amended complaint on July 7, 2025. The court screened the complaint and issued findings and recommendations to dismiss certain claims and defendants; those recommendations remained pending before the assigned district judge. Plaintiff then filed a motion to appoint counsel, which the magistrate judge denied.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998)
- Mallard v. U.S. Dist. Ct., 490 U.S. 296, 304-05 (1989)
- Porter v. Rivas, No. 1:23-cv-00105-ADA-CDB (PC), 2023 WL 4765492, at *1 (E.D. Cal. July 26, 2023)
- LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987)
- Bonin v. Vasquez, 999 F.2d 425, 428-29 (9th Cir. 1993)
- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Maldonado v. Merritt, No. 1:23-cv-00482-JLT-SKO (PC), 2023 WL 6751114, at *3 (E.D. Cal. Oct. 12, 2023)
- Lane v. Beach, No. 1:20-cv-00147-JLT-GSA (PC), 2023 WL 4936300, at *1 (E.D. Cal. Aug. 2, 2023)
- Ireland v. Solano Cnty. Jail, No. CV-08-2707-LRS, 2010 WL 367776, at *1 (E.D. Cal. Jan. 26, 2010)
- Andre-Gollihar v. County of San Joaquin, No. 2:09-cv-03313 MCE KJN PS, 2010 WL 2925358, at *2 (E.D. Cal. July 26, 2010)
- Suarez v. Clark, No. 1:22-cv-00160-JLT-SAB (PC), 2024 WL 477982, at *1 (E.D. Cal. Jan. 25, 2024)
- Dijkstra v. Campos, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022)
- Robinson v. Cryer, No. 1:20-cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D. Cal. Jan. 11, 2021)
- Callender v. Ramm, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018)
- Galvan v. Fox, No. 2:15-CV-01798-KJM (DB), 2017 WL 1353754, at *8 (E.D. Cal. Apr. 12, 2017)
- Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)
- Karim–Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)
- Ricks v. Austria, No. 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 VINCENT JOHNNY AVALOS, Case No. 1:21-cv-00084-KES-CDB (PC) 12
Plaintiff, ORDER DENYING PLAINTIFF’S [MOTION TO APPOINT COUNSEL 13 v. (Doc. 41)
14 SARA L. KIRCHEN-ROLPH, et al., 15 Defendants. 16 17 Plaintiff Vincent Johnny Avalos is a

state prisoner proceeding pro se and in forma pauperis 18 in this civil rights action brought under 42 U.S.C. § 1983.

On July 7, 2025, Plaintiff filed the 19 operative, second amended complaint (“SAC”).¹ (Doc. 39). 20 Pending before the Court is Plaintiff’s motion to appoint counsel, filed on September 2, 21 2025. (Doc. 41). In support, Plaintiff represents that he is unable to afford counsel, his 22 imprisonment will greatly limit his ability to properly litigate the case which involves complex 23 issues, and trial counsel would better enable him to present evidence and cross examine witnesses 24 at trial.

Id. ¶¶ 1-3. Plaintiff further represents that he has signed a legal services contract with 25 attorney Royal DL Bond on July 16, 2024. Id. ¶¶ 4, 5. 26 /// 27 1 On August 18, 2025, the undersigned screened Plaintiff’s SAC and issued findings and recommendations to dismiss certain claims and defendants, which are pending before the assigned 28 District Judge.

(Doc. 40). 1 Motion to Appoint Counsel 2 A. Governing Authority 3 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions. 4 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on other grounds, 154 F.3d 5 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28 6 U.S.C. § 1915(e)(1).

See *Mallard v. U.S. Dist. Ct.*, 490 U.S. 296, 304-05 (1989). However, in 7 “exceptional circumstances,” the Court may request the voluntary assistance of counsel pursuant 8 to section 1915(e)(1). *Rand*, 113 F.3d at 1525. 9 Given that the Court has no reasonable method of securing and compensating counsel, the 10 Court will seek volunteer counsel only in extraordinary cases.

In determining whether “exceptional 11 circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] 12 the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal 13 issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks & citations omitted). 14 B. Analysis 15 First, the Court must evaluate the likelihood of Plaintiff’s success on the merits of his 16 claims.

Rand, 113 F.3d at 1525. As noted above, the screening of Plaintiff’s SAC is pending before 17 the Court. See (Doc. 40). At screening, the Court is tasked with determining whether a plaintiff 18 has sufficiently and plausibly alleged a cause of action or claim entitling the plaintiff to relief. 19 Further, the merits of the allegations are not tested, for the Court is to consider factual allegations 20 to be true for purposes of screening.

No determination has yet been made as to the merits of 21 Plaintiff’s claims. Therefore, a likelihood of success on the merits determination is premature. See, 22 e.g., *Porter v. Rivas*, No. 1:23-cv-00105- ADA-CDB (PC), 2023 WL 4765492, at *1 (E.D. Cal. 23 July 26, 2023). 24 Next, the Court must evaluate Plaintiff’s ability to articulate his claims pro se considering 25 the complexity of the legal issues involved.

Rand, 113 F.3d at 1525. In this case, the Court notes 26 that Plaintiff's filings reflect he is logical and articulate. See, e.g. (Docs. 1, 13, 17, 20, 23, 39); 27 *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court's denial of request for 1 issues and the ability to present forcefully and coherently his contentions"). Further, neither the 2 claims asserted nor the relevant events and transactions are complex.

See *Bonin v. Vasquez*, 999 3 F.2d 425, 428–29 (9th Cir. 1993) (while Plaintiff may have limited knowledge of the law, the Court 4 does not find the issues in this case "so complex that due process violations will occur absent the 5 presence of counsel"); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (explaining that 6 "[a]lthough discovery was essential ... the need for such discovery does not necessarily qualify the 7 issues involved as 'complex'").

Indeed, Plaintiff's claims for violations of the Fourth 8 Amendment's prohibition on unlawful search and seizure, the Eighth Amendment's prohibition on 9 deliberate indifference to serious medical needs, and the Fourteenth Amendment's Due Process 10 Clause, such as presented here, are common and not ordinarily complex. See, e.g., *Maldonado v. 11 Merritt*, No. 1:23-cv-00482-JLT-SKO (PC), 2023 WL 6751114, at *3 (E.D.

Cal. Oct. 12, 2023) 12 ("Eighth Amendment deliberate indifference to serious medical needs claims are not complex"); 13 *Lane v. Beach*, No. 1:20-cv-00147-JLT-GSA (PC), 2023 WL 4936300, at *1 (E.D. Cal. Aug. 2, 14 2023) (same); *Ireland v. Solano Cnty. Jail*, No. CV-08-2707-LRS, 2010 WL 367776, at *1 (E.D. 15 Cal. Jan. 26, 2010) (same); *Andre-Gollihar v. County of San Joaquin*, No. 2:09-cv-03313 MCE 16 KJN PS, 2010 WL 2925358, at *2 (E.D.

Cal. July 26, 2010) ("plaintiff's claims of excessive force 17 ... are not complex"); *Bonin v. Vasquez*, 999 F.2d 425, 428–29 (9th Cir. 1993) (while Plaintiff may 18 have limited knowledge of the law, the Court does not find the issues in this case "so complex that 19 due process violations will occur absent the presence of counsel").

In short, the Court finds Plaintiff 20 able to articulate his claims in light of their complexity. 21 To the extent Plaintiff relies upon his indigency and incarceration to support his motion, 22 those circumstances do not qualify as exceptional circumstances warranting the appointment of 23 counsel. See *Suarez v. Clark*, No. 1:22-cv-00160-JLT-SAB (PC), 2024 WL 477982, at *1 (E.D.

24 Cal. Jan. 25, 2024) ("the Court has 'repeatedly' held incarceration's challenges on litigation do not 25 constitute an exceptional circumstance. [] If Plaintiff's incarceration was an exceptional 26 circumstance, any prisoner would be entitled to counsel"); *Dijkstra v. Campos*, No. 1:21-cv-01223- 27 HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022) ("Plaintiff's indigence does not qualify 'as 1 KJM DB P, 2021 WL 242570, at *2 (E.D.

Cal. Jan. 25, 2021) ("Plaintiff's inability to afford counsel 2 has no bearing on either his likelihood of success on the merits or his ability to articulate his claims 3 pro se"); *Robinson v. Cryer*, No.

1:20-cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D. Cal. 4 Jan. 11, 2021) (“Although Plaintiff is proceeding pro se and is incarcerated, he faces the same 5 obstacles all pro se prisoners face”).

Callender v. Ramm, No. 2:16-cv-0694 JAM AC P, 2018 WL 6 6448536, at *3 (E.D. Cal. Dec. 10, 2018) (“The law is clear: neither plaintiff’s indigence, nor his 7 lack of education, nor his lack of legal expertise warrant the appointment of counsel”); Galvan v. 8 Fox, No. 2:15-CV-01798-KJM (DB), 2017 WL 1353754, at *8 (E.D. Cal. Apr. 12, 2017) (same). 9 Further, the fact an attorney may be better able to perform research, investigate, and 10 represent Plaintiff during trial does not amount to an exceptional circumstance.

Rand, 113 F.3d at 11 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied 12 appointment of counsel despite fact that pro se prisoner “may well have fared better-particularly in 13 the realm of discovery and the securing of expert testimony”). There is little doubt most pro se 14 litigants “find it difficult to articulate [their] claims,” and would be better served with the assistance 15 of counsel.

Wilborn, 789 F.2d at 1331. For this reason, in the absence of counsel, federal courts 16 employ procedures which are highly protective of a pro se litigant’s rights. See Haines v. Kerner, 17 404 U.S. 519, 520 (1972) (holding pro se complaint to less stringent standard) (per curiam).

In 18 fact, where a plaintiff appears pro se in a civil rights case, the court must construe the pleadings 19 liberally and afford the plaintiff any benefit of the doubt. Karim–Panahi v. Los Angeles Police 20 Dep’t, 839 F.2d 621, 623 (9th Cir. 1988).

The rule of liberal construction is “particularly important 21 in civil rights cases.” Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992). Thus, where a pro 22 se litigant can “articulate his claims” in light of the relative complexity of the matter, the 23 “exceptional circumstances” which might require the appointment of counsel do not exist. Wilborn, 24 789 F.2d at 1331; see Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir.

2009); Ricks v. Austria, No. 25 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016) (while a pro se 26 litigant may be better served with the assistance of counsel were the case to proceed to trial, the 27 court need not appoint counsel if plaintiff can articulate his claims and exceptional circumstances 1 | (S.D. Cal. Jan. 11, 2011) (explaining that “[f]actual disputes and anticipated cross-examination of 2 || witnesses do not indicate the presence of complex legal issues warranting a finding of exceptional 3 | circumstances”).

4 The test is not whether Plaintiff would benefit from the appointment of counsel; the test is 5 | whether exceptional circumstances exist. Here, no exceptional circumstances exist warranting the 6 | appointment of counsel.

Thus, Plaintiff's motion will be denied. 7 Based on Plaintiff's representations that he signed a purported legal services contract with 8 | attorney Royal DL Bond, it is unclear to the Court whether Plaintiff seeks to communicate to the 9 | Court that he now is represented by counsel.

To the extent Plaintiff represents he has privately 10 | retained counsel, he is advised that counsel is required under the Local Rules to properly be 11 | admitted to practice in the eastern District of California and file a notice of appearance on behalf 12 | of Plaintiff. See Local Rules 131(a), 135(g), 182(a).

To the extent Plaintiff seeks for the Court to 13 | underwrite the fees for any retained attorney, Plaintiff cites no authority that the Court under these 14 || circumstances is authorized to do so. 15 Conclusion and Order 16 Accordingly, it is hereby ORDERED that Plaintiff's motion for appointment of counsel 17 | (Doc. 41) is DENIED. 18 | IT IS SO ORDERED.

Dated: _ September 3, 2025 | Ww VV KD 20 UNITED STATES MAGISTRATE JUDGE 21 22 23 24 25 26 27 28