

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PRECEDENTIAL VALUE	unpublished district court order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)