

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

David Earl Ray Gallegos v. Traci Carter, et al.

Gallegos · No. 2:25-cv-01760-BHS-DWC · Decided January 7, 2026

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF
WASHINGTON AT TACOMA 9 10 DAVID EARL RAY GALLEGOS, CASE NO. 2:25-cv-
01760-BHS-DWC 11 Plaintiff, v. ORDER GRANTING MOTION TO 12 AMEND AND
DENYING MOTION TRACI CARTER, et al., FOR COUNSEL WITHOUT 13 PREJUDICE
Defendants. 14 15 The District Court has referred this pro se prisoner civil rights action to United
States 16 Magistrate Judge David W. Christel.

Currently before the Court are two motions filed by 17 Plaintiff David Earl Ray Gallegos: a
motion for leave to file a second amended complaint (Dkt. 18 8) and a motion to appoint counsel
(Dkt. 10). Defendants have appeared in this action but have 19 not responded to either motion.
See docket.

For the reasons below, the motion to amend (Dkt. 8) 20 is GRANTED and the motion to appoint
counsel (Dkt. 10) is DENIED without prejudice. 21 I. Background 22 Plaintiff initiated this action
on September 11, 2025. Dkt. 1.

The Court declined to serve 23 Plaintiff's original complaint but granted him leave to amend. Dkt.
5. Plaintiff filed an amended 24 1 complaint on October 13, 2025, and the Court directed service
of the amended complaint on 2 Defendants. Dkts. 6, 7.

On December 2, 2025, Plaintiff filed a motion for leave to file a second 3 amended complaint with
the proposed second amended complaint attached. Dkt. 8. Defense 4 counsel filed a notice of
appearance the following day. Dkt. 9.

On December 9, 2025, Plaintiff 5 filed a motion requesting appointment of counsel. Dkt. 10.
Defendants did not respond to either 6 of Plaintiff's pending motions. See docket. 7 II. Motion for
Leave to File Second Amended Complaint (Dkt. 8) 8 After a party has amended a pleading once
as a matter of course, the party may amend the 9 pleading again "only with the opposing party's
written consent or the court's leave." Fed.

R. Civ. 10 P. 15(a). Because Defendants have not given consent, Plaintiff must have the Court's
leave to 11 file the second amended complaint. Federal Rule of Civil Procedure 15(a) "is very
liberal and 12 leave to amend 'shall be freely given when justice so requires.'"

AmerisourceBergen Corp. v. 13 Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006) (quoting Fed.

R. Civ. P. 15(a)). 14 However, leave to amend “is not to be granted automatically.” Jackson v. Bank of Haw., 902 F.2d 1385, 1387 (9th Cir. 1990). When determining whether to grant leave to amend, the Court 16 considers five factors: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) 17 futility of amendment; and (5) whether plaintiff has previously amended his complaint.” Allen v. 18 City of Beverly Hills, 911 F.2d 367, 373 (9th Cir.

1990). 19 In his motion, Plaintiff states the second amended complaint contains corrected dates for 20 the alleged constitutional violations. Dkt. 8.1 The Court finds no evidence of bad faith, undue 21 delay, prejudice to Defendants, or futility. Plaintiff previously amended his complaint before 22 23 1 Plaintiff further requests that the Court remove or ignore a portion of his proposed second amended complaint.

See Dkt. 8 at 2. The Court will not make changes to Plaintiff’s filings. If Plaintiff wishes to make further 24 amendments to his complaint, he may file another motion. 1 service and after being given leave to do so by the Court. Defendants have not opposed this 2 motion. Considering these factors, the Court finds the interests of justice require that Plaintiff’s 3 motion to amend (Dkt.

8) be granted. 4 III. Motion to Appoint Counsel (Dkt. 10) 5 There is no constitutional right to appointed counsel in a § 1983 action. See Storseth v. 6 Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981); United States v. \$292,888.04 in U.S. Currency, 7 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, 8 not mandatory”).

A district court may appoint voluntary counsel for indigent civil litigants 9 pursuant to 28 U.S.C. § 1915(e)(1), but only in “exceptional circumstances.” Rand v. Roland, 10 113 F.3d 1520, 1525 (9th Cir. 1997), overruled on other grounds, 154 F.3d 952 (9th Cir. 1998). 11 To decide whether exceptional circumstances exist, the Court evaluates “the likelihood of 12 success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of 13 the complexity of the legal issues involved.” Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th 14 Cir.

1986) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). Therefore, to show 15 exceptional circumstances warranting appointment of counsel, a plaintiff must plead facts 16 showing he has (1) an insufficient grasp of his case or the legal issues involved and (2) an 17 inadequate ability to articulate the factual basis of his claims. Agyeman v. Corr.

Corp. of Am., 18 390 F.3d 1101, 1103 (9th Cir. 2004). 19 In his motion, Plaintiff states he has been diagnosed with schizoaffective disorder – 20 depressive type and “suffers from hallucinations that make it difficult for [him] to perform some 21 daily tasks including tasks of legal work in this current case.” Dkt. 10 at 2. He also asserts he will 22 have difficulty accessing

necessary documents in a timely manner, lacks adequate education to 23 argue his case at trial, and does not have funds to pay for counsel.

Id. Plaintiff argues that this is 24 1 an “exceptional situation” because his “daily auditory hallucinations make it impossible” for him 2 to pursue this case without assistance of counsel. Id. at 3. 3 At this time, Plaintiff has not shown, nor does the Court find, this case involves 4 especially complex facts or law.

In addition, Plaintiff has not shown an inability to articulate the 5 factual basis of his claims in an understandable manner. Rather, despite his mental health 6 challenges, Plaintiff’s filings thus far demonstrate he is able to articulate his requests in a way 7 that is understandable to the Court. While Plaintiff may be able to better litigate this case with 8 appointed counsel, that fact alone does not establish exceptional circumstances warranting the 9 appointment of counsel.

See *Rand*, 113 F.3d at 1525; *Wilborn*, 789 F.2d at 1331. Because 10 Plaintiff has not shown appointment of counsel is appropriate at this time, his motion to appoint 11 counsel (Dkt. 10) is denied without prejudice. 12 Dated this 7th day of January, 2026. 13 A 14 David W. Christel
United States Magistrate Judge 15 16 17 18 19 20 21 22 23 24