

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Frank Gable v. Frederick Ackom, et al.

Gable · No. 6:24-cv-01131-AA · Decided March 19, 2026

SUMMARY

The United States District Court for the District of Oregon denied Plaintiff Frank Gable’s motion to appoint personal representatives for four deceased defendants in his 42 U.S.C. § 1983 action. The court held that the motion was not ripe because Plaintiff’s appeal of the state probate court’s decision was pending, and permitted him to renew the motion after the state proceedings became final.

CASE DETAILS

COURT	United States District Court for the District of Oregon
WRITING FOR THE COURT	Ann Aiken
JURISDICTION	United States District Court for the District of Oregon
DECIDED	March 19, 2026
DOCKET	6:24-cv-01131-AA
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiff moved under 42 U.S.C. § 1988 for appointment of personal representatives for four deceased defendants so they could defend the pending § 1983 action. The district court denied the motion as unripe because Plaintiff's appeal from the state probate court's refusal to open estates remained pending.
STANDARD OF REVIEW	Ripeness; whether state law is deficient under 42 U.S.C. § 1988 is not considered while the relevant state-court decision remains subject to a pending appeal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Frank Gable v. Frederick Ackom, William Pierce, Dennis Fox, Mark Ranger, Emil Brandaw, other named Defendants

TOPICS

- section 1983
- civil rights
- probate procedure
- remedies
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court could invoke 42 U.S.C. § 1988 to appoint personal representatives for deceased defendants while Plaintiff's appeal from the state probate court's refusal to open estates remained pending.
2. Whether Plaintiff's motion was ripe when the alleged deficiency in state law could be eliminated by a favorable state appellate decision.

HOLDINGS

1. The motion was not ripe because the state-court appeal could resolve whether state law was actually deficient and could eliminate any need for a federal remedy.
2. The motion to appoint personal representatives was denied without prejudice, and Plaintiff could renew it after the state courts rendered a final decision and no appeal remained pending.

KEY QUOTATIONS

"The 'ultimate rule adopted under § 1988 'is a federal rule responsive to the need whenever a federal right is impaired.'" (Discussion)

"Plaintiff's motion is not ripe for decision on the merits. Plaintiff may renew the motion once the outcome in state court is final." (Discussion)

FACTUAL BACKGROUND

Plaintiff spent approximately 30 years in prison before obtaining habeas relief based on evidence that witnesses had been coerced and manipulated to secure his conviction. His conviction was vacated, the Ninth Circuit affirmed, and the charges were dismissed with prejudice. Plaintiff subsequently filed this § 1983 and Oregon-law tort action against individual defendants, four of whom were deceased and had no opened estates. The Oregon probate court denied Plaintiff's petition to open estates and appoint personal representatives as untimely, but Plaintiff's appeal of that ruling was pending when he sought federal relief.

PROCEDURAL HISTORY

Plaintiff's conviction was vacated after habeas relief, and his criminal charges were later dismissed with prejudice. He then brought this federal civil-rights action against individual defendants, six of whom were deceased. After the state probate court denied Plaintiff's petition to open estates and appoint personal representatives for four defendants as untimely under Oregon law, Plaintiff appealed that ruling in state court and sought a federal appointment under § 1988. The district court denied the motion without prejudice and permitted renewal after the state-court proceedings become final.

DISPOSITION

denied

CASES CITED

- Gable v. Williams, 49 F.4th 1315, 1319-19 (9th Cir. 2022)
- Robertson v. Wegmann, 436 U.S. 584, 588 (1978)
- Moor v. County of Alameda, 411 U.S. 693, 703 (1973)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON EUGENE
DIVISION FRANK GABLE, Civ. No. 6:24-cv-01131-AA OPINION AND ORDER Plaintiff, v.
FREDERICK ACKOM, et al., Defendants. _____

AIKEN, District Judge. Plaintiff alleges federal civil rights violations under 42 U.S.C. § 1983 against individual Defendants, six of whom are now deceased.

Before the Court is Plaintiff's Motion to Appoint a Personal Representative for four of those Defendants: William Pierce, Dennis Fox, Mark Ranger, and Emil Brandaw. ECF No. 58. For the reasons explained below, the Motion is DENIED. BACKGROUND After spending 30 years in prison, Plaintiff's petition for habeas corpus was granted, given evidence that Plaintiff gathered demonstrating that Defendants had coerced and manipulated witnesses into falsely testifying to secure Plaintiff's conviction.

Compl. ¶¶ 115-122. This Court vacated Plaintiff's conviction and ordered a new trial. Id. ¶¶ 117-119. The Ninth Circuit Court of Appeals affirmed, stating that "the State's main witnesses were irreversibly tainted by coercive investigative techniques." Gable v. Williams, 49 F.4th 1315, 1319-19 (9th Cir. 2022). Ultimately, Plaintiff's charges were dismissed with prejudice.

Compl. ¶¶ 120-121. Now, Plaintiff brings this suit against Defendants, alleging that they violated his constitutional rights under the Fourth and Fourteenth Amendments and are liable to him for tortious conduct under Oregon law. Six of the named Defendants are deceased. Pl. Mot. at 2, ECF No. 58.

For two of them, Plaintiff has substituted their personal representatives, allegedly duly appointed under Oregon law. Id. For four of them, William Pierce, Dennis Fox, Mark Ranger, and Emil Brandaw, no estate was ever opened. Id. Plaintiff retained probate counsel to open estates and have appointed a personal representative who could defend the lawsuit for the four Defendants.

Id. at 3. The probate court denied the petition as untimely under ORS 12.190. Id. Plaintiff filed a motion to reconsider, which was denied. Id. Plaintiff asserts that the probate court's application of state law has frustrated his efforts to pursue his civil rights action against these four Defendants. Id. He asks this Court to invoke its authority under 42 U.S.C. § 1988 to effectuate the purpose of 42 U.S.C. § 1983 and appoint a personal representative for the deceased Defendants.

Id. Since the filing of the Motion, Plaintiff's appeal has been revived in state court. ECF 86 at 9.c. Oral arguments have been scheduled in the Oregon Court of Appeals for May 20, 2026. Notice of Oral Argument, In the Matter of William John Pierce, deceased, Oregon Court of Appeals, No. A186732 (March 11, 2026) DISCUSSION Under 42 U.S.C. § 1988, the jurisdiction conferred on district courts to protect civil rights by the provision of § 1983 "shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect." But, in all cases where § 1983 is "deficient in the provisions necessary to furnish suitable remedies and punish offenses against law," the common law governs the court's disposition, and that disposition must be consistent with the laws of the state where the district court sits and with the Constitution.

42 U.S.C. § 1988. The "ultimate rule adopted under § 1988 'is a federal rule responsive to the need whenever a federal right is impaired.'" *Robertson v. Wegmann*, 436 U.S. 584, 588 (1978) (quoting *Moor v. County of Alameda*, 411 U.S. 693, 703 (1973)). Plaintiff asserts that under § 1988, the Court must fashion a remedy where state law falls short in achieving the remedial purpose of § 1983.

Pl. Mot. at 4. Here, Plaintiff maintains that the state failed to open estates and appoint person representatives in state court, and therefore, this Court must appoint personal representatives to defend the case on behalf of the deceased alleged wrongdoers. Id. In Plaintiff's own words: "[S]tate law cannot frustrate Section 1983 actions, and there is no legitimate argument or authority to the contrary." Pl.

Mot. at 4. The issue with Plaintiff's motion is that Plaintiff is actively appealing the adverse decision of the state probate court. With an appeal pending, this Court cannot answer the threshold question of whether the state law is "deficient," as would be necessary to consider the asked-for federal remedy under § 1988. If Plaintiff is successful in his appeal, there is no longer any argument that state law is deficient, and therefore no need for the Court to craft a federal remedy.

In sum, Plaintiff's motion rests on a premise—that he was "frustrated" in state court—that is subject to change, and that Plaintiff is actively trying to change in proceedings before the Oregon Court of Appeals. Plaintiff's motion is not ripe for decision on the merits. Plaintiff may renew the motion once the outcome in state court is final. CONCLUSION For the reasons explained above, Plaintiff's Motion to Appoint a Personal Representative, ECF No. 58, is DENIED.

Plaintiff may renew this motion, if applicable, once the state courts have rendered a final decision and no appeal is pending. It is so ORDERED and DATED this 19th day of March 2026
/s/ A_n_n_A_ik_e_n ANN AIKEN United States Senior District Judge