

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Downs v. Jiminez

Downs · No. 2:22-cv-1021 TLN AC P · Decided April 24, 2025

SUMMARY

The United States District Court for the Eastern District of California denies plaintiff Ivory Lewis Downs, Jr.'s request for appointment of counsel in his § 1983 action. The court concludes that the plaintiff's concerns about mail delivery and receipt of objections do not establish exceptional circumstances warranting voluntary appointment of counsel.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 24, 2025
DOCKET	2:22-cv-1021 TLN AC P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's letter requesting appointment of counsel was construed as a motion for appointment of counsel in a prisoner civil-rights action under 42 U.S.C. § 1983.
STANDARD OF REVIEW	Appointment of counsel for an indigent prisoner in a § 1983 action is discretionary and requires a showing of exceptional circumstances, evaluated by considering the likelihood of success on the merits and the plaintiff's ability to articulate claims in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	Unknown
PARTIES	Ivory Lewis Downs, Jr. v. M. Jiminez, et al.

TOPICS

- prisoners rights
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

civil rights

prisoner civil rights

appointment of counsel

QUESTIONS PRESENTED

1. Whether plaintiff established exceptional circumstances warranting the court's request for voluntary appointment of counsel under 28 U.S.C. § 1915(e)(1).

HOLDINGS

1. Plaintiff failed to demonstrate exceptional circumstances warranting a request for voluntary assistance of counsel, so his request for appointment of counsel was denied.
2. The district court lacks authority to require counsel to represent an indigent prisoner in a § 1983 case, but may request voluntary assistance in exceptional circumstances.

KEY QUOTATIONS

““When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.’” (1)

“Accordingly, IT IS HEREBY ORDERED that plaintiffs request for the appointment of counsel (ECF No. 45) is DENIED.” (2)

FACTUAL BACKGROUND

Plaintiff asserted that he had filed objections to March 10, 2023 findings and recommendations, although the order adopting those findings stated that he had not. He attributed the problem to the prison mail room and continuing mail issues, and based his request for counsel primarily on the belief that his objections had not reached the court. The court received the objections on April 1, 2025.

PROCEDURAL HISTORY

The court had previously adopted findings and recommendations stating that plaintiff had not filed objections. Plaintiff then submitted a letter asserting that he had filed objections and that mail-room problems interfered with his mail, and requested appointment of counsel. The court subsequently received plaintiff's objections on April 1, 2025, and denied the request for counsel.

DISPOSITION

other

CASES CITED

- Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)

OPINION

(PC) Downs v. Jiminez

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 IVORY LEWIS DOWNS, JR., No. 2:22-cv-1021 TLN AC P

12 Plaintiff, 13 v. ORDER 14 M. JIMINEZ, et al., 15 Defendants. 16 17 Plaintiff has submitted a
letter to the court stating that he filed objections to the March 10, 18 2023 findings and
recommendations even though the order adopting the findings and 19 recommendations states that
he did not. ECF No. 45. He requests appointment of counsel on the 20 grounds that he believes the
mail room did not send out his mail and that he has had continuing 21 issues with mail. Id.
Accordingly, the letter is construed as a motion for appointment of counsel. 22 The United States
Supreme Court has ruled that district courts lack authority to require 23 counsel to represent
indigent prisoners in § 1983 cases. *Mallard v. United States Dist. Court*, 490 24 U.S. 296, 298
(1989). In certain exceptional circumstances, the district court may request the 25 voluntary
assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 26 1015,
1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 27 “When
determining whether ‘exceptional circumstances’ exist, a court must consider ‘the 28 likelihood of
success on the merits as well as the ability of the [plaintiff] to articulate his claims 1 || pro se in
light of the complexity of the legal issues involved.’” *Palmer v. Valdez*, 560 F.3d 965, 2 | 970 (9th
Cir. 2009) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The burden 3 || of
demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to 4 ||
most prisoners, such as lack of legal education and limited law library access, do not establish 5 ||
exceptional circumstances that would warrant a request for voluntary assistance of counsel. 6
Although the order adopting the findings and recommendations states that plaintiff did not 7 || file
objections (ECF No. 42), the court did receive plaintiffs objections to the findings and 8 ||
recommendations on April 1, 2025. Since plaintiffs request for counsel is based primarily on his 9
|| belief that his objections were not received by the court, the request for counsel will be denied.
10 Accordingly, IT IS HEREBY ORDERED that plaintiffs request for the appointment of 11 ||
counsel (ECF No. 45) is DENIED. 12 | DATED: April 23, 2025 ~ 13 ththienr—Chnp—e_

ALLISON CLAIRE

14 UNITED STATES MAGISTRATE JUDGE

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