

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Melvin Parker, III v. Jeff Lynch, et al.

No. 2:23-cv-0754 DC CSK P · No. No. 2:23-cv-0754 DC CSK P · Decided August 13, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Melvin Parker III's motion for appointment of new counsel in his 42 U.S.C. § 1983 action. The court held that the excessive-force claims proceeding to trial were not sufficiently complex and that plaintiff's asserted imprisonment, limited law-library access, and unsupported mental-health concerns did not establish exceptional circumstances. The court also noted that previously appointed counsel had withdrawn and that discovery was closed.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MELVIN PARKER, III, No. 2:23-cv-0754 DC CSK P 12 Plaintiff, 13 v.
ORDER 14 JEFF LYNCH, et al., 15 Defendants. 16 17 I. INTRODUCTION 18 Plaintiff is a state
prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. 19 Pending before this
Court is plaintiff's motion for appointment of counsel.

(ECF No. 54.) For 20 the following reasons, plaintiff's motion for appointment of counsel is
denied. 21 II. LEGAL STANDARD FOR APPOINTMENT OF COUNSEL 22 District courts lack
authority to require counsel to represent indigent prisoners in section 23 1983 cases. *Mallard v.*
United States Dist. Court, 490 U.S. 296, 298 (1989).

In exceptional 24 circumstances, the court may request an attorney to voluntarily represent such a
plaintiff. See 28 25 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);
Wood v. 26 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether
"exceptional 27 circumstances" exist, the court must consider plaintiff's likelihood of success on
the merits as 28 well as the ability of the plaintiff to articulate his claims pro se in light of the
complexity of the 1 legal issues involved.

Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 2 abuse discretion in
declining to appoint counsel). The burden of demonstrating exceptional 3 circumstances is on the
plaintiff. *Id.* Circumstances common to most prisoners, such as lack of 4 legal education and
limited law library access, do not establish exceptional circumstances that 5 warrant a request for
voluntary assistance of counsel.

6 III. DISCUSSION 7 On October 28, 2024, the Court appointed attorney Benjamin Rudolph Delson to represent 8 plaintiff in this action. (ECF No. 37.) On July 14, 2025, Mr. Delson filed a motion to withdraw 9 as counsel. (ECF No. 48.)

In a declaration submitted in support of the motion to withdraw, Mr. 10 Delson stated that he and plaintiff had irreconcilable disagreements about how this case should be 11 litigated. (ECF No. 48-1 at 2.) Mr. Delson also stated that plaintiff's conduct toward Mr. Delson 12 made it difficult for Mr. Delson to carry out representation effectively. (Id.)

On July 16, 2025, 13 the Court granted Mr. Delson's motion to withdraw. (ECF No. 51.) On July 23, 2025, this Court 14 issued a Further Scheduling Order setting this action for jury trial before the Honorable Dena M. 15 Duggins on February 23, 2026. (ECF No. 53.) 16 In the pending motion, plaintiff requests that new counsel be appointed to represent 17 plaintiff at trial.

(ECF No. 54 at 1.) Plaintiff claims that his imprisonment will greatly limit 18 plaintiff's ability to litigate this action. (Id.) Plaintiff claims that the issues involved in this 19 action are deeply complex, require significant research and investigation. (Id.) Plaintiff alleges 20 that he has limited law library access. (Id.) Plaintiff claims that he has been admitted to the 21 mental hospital at the California Medical Facility ("CMF") for mental health issues.

(Id. at 2.) 22 Plaintiff claims that having counsel appointed to represent plaintiff at trial will better enable 23 plaintiff to present evidence and cross-examine witnesses. (Id.) Plaintiff claims that he has been 24 attempting to reach witnesses at another prison who Mr. Delson was supposed to have 25 interviewed for trial. (Id.) 26 This Court finds that the issues proceeding to trial are not deeply complex, as plaintiff 27 claims in the pending motion.

This action proceeds to trial as to plaintiff's claims alleging that 28 defendants Watts and Corture used excessive force against plaintiff on August 10, 2022. (ECF 1 | No. 1.) Plaintiff alleges that during a cell search, defendant Corture ordered plaintiff out of 2 | plaintiff's cell and told plaintiff to face the wall in the dayroom. (Id. at 3.)

As plaintiff complied, 3 || defendants Watts and Corture allegedly punched plaintiff in the back of the head and on the left 4 || side of his face. (Id.) Plaintiff alleges that defendant Watts then slammed plaintiff to the ground 5 || and began twisting plaintiff's arms, causing pain and suffering. (Id.) Plaintiff alleges that 6 || defendant Corture then placed his knee on the left side of plaintiff's neck, causing plaintiff pain 7 || and suffering.

(Id.) Plaintiff's excessive force claims against defendants Watts and Corture are 8 | not particularly complex. 9 In the pending motion, plaintiff also claims that new counsel should be appointed because 10 || the issues in this action require significant research and investigation.

As observed in the Further 11 | Scheduling Order, discovery is closed. (ECF No. 53.) For this reason, plaintiffs claim that the 12 || issues in this action require significant research and investigation is not well supported. 13 In the pending motion, plaintiff claims that he has mental health issues and has been 14 || admitted to the mental hospital at CMF.

Plaintiff provides no medical or mental health records 15 || supporting this claim or demonstrating that plaintiff's mental health problems render plaintiff 16 || unable to litigate this action. Plaintiff also requests that new counsel be appointed because 17 || plaintiff has limited law library access.

As stated above, limited law library access is not an 18 || exceptional circumstance warranting appointment of counsel. 19 The resources available to the court to appoint counsel to represent prisoners proceeding 20 || pro se are very limited.

As discussed above, the Court previously appointed counsel to represent 21 | plaintiff but counsel withdrew. For this reason and the reasons discussed above, the Court can 22 || expend no additional resources in finding new counsel to represent plaintiff at trial. 23 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of 24 || counsel (ECF No. 54) is denied.

25 7 - Oo. 26 || Dated: August 12, 2025 | LAK BO □ 7 CHI 500 KIM UNITED STATES
MAGISTRATE JUDGE 28 || park0754.31.new/2