

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

David Brian Morgan v. United States, et al.

No. 1:25-cv-253 JCH/LF · No. No. 1:25-cv-253 JCH/LF · Decided December 16, 2025

SUMMARY

The United States District Court for the District of New Mexico directs pro se Plaintiff David Brian Morgan to file a § 1983 complaint and either pay the filing fee or submit an in forma pauperis application with the required account statement. The court denies the request for issuance of summons without prejudice, grants in part and denies in part the motion to alter or amend, and declines to request pro bono counsel.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Judith C. Herrera
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	December 16, 2025
DOCKET	No. 1:25-cv-253 JCH/LF
DISPOSITION	other
PROCEDURAL POSTURE	The court considered a pro se prisoner's proposed civil-rights pleading, request for issuance of summons, and motion to alter or amend before the filing of a completed § 1983 complaint.
STANDARD OF REVIEW	The court stated that a prisoner seeking redress from a governmental entity or officer must have the complaint screened under 28 U.S.C. § 1915A, with sua sponte dismissal required for failure to state a cognizable claim or for seeking monetary relief from an immune defendant. The request for appointed counsel was reviewed under a discretionary-factor analysis.
PRECEDENTIAL VALUE	Unknown; memorandum opinion and order from a federal district court, with no precedential designation stated.
PARTIES	David Brian Morgan v. United States, et al.

TOPICS

- section 1983
- prisoners rights
- service of process
- motion to amend
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

prisoner civil rights

pro se litigation

QUESTIONS PRESENTED

1. Whether the plaintiff should be required to file a completed § 1983 complaint and either prepay the filing fee or submit a compliant in forma pauperis application.
2. Whether issuance of summons was premature before filing and screening of a viable prisoner civil-rights complaint.
3. Whether the plaintiff should be permitted to amend defendant names and request a jury trial.
4. Whether counsel should be appointed or requested on a pro bono basis for the pro se prisoner.

HOLDINGS

1. The plaintiff was ordered to file a complaint on the § 1983 form within thirty days and, by the same deadline, either prepay the \$405 filing fee or submit an in forma pauperis motion with a six-month account statement.
2. The request for issuance of summons was denied without prejudice because it was premature before filing and initial screening of a completed prisoner complaint.
3. The motion to alter or amend was granted in part, permitting the plaintiff to amend the names of defendants and seek a jury trial in the amended complaint filed within thirty days.
4. The request for appointment of counsel was denied without prejudice because the court may only request an attorney to undertake a § 1983 case on a pro bono basis, and the discretionary factors did not warrant such a request at that stage.

KEY QUOTATIONS

“Sua sponte dismissal is required if the Complaint fails to state a cognizable claim or seeks monetary relief from a defendant who is immune.” (at 1)

“Considering these factors, the Court will not ask a local attorney to handle this case on a pro bono basis.” (at 2)

FACTUAL BACKGROUND

Plaintiff, proceeding pro se and as an inmate, sought monetary damages connected to the dismissal of a prior prisoner habeas case. He had not submitted the § 1983 complaint form or in forma pauperis materials sent by the Clerk. He nevertheless requested issuance of summonses and sought to amend defendant names, request a jury trial, and obtain appointed counsel.

PROCEDURAL HISTORY

Morgan submitted a prisoner pleading seeking monetary damages relating to dismissal of a prior habeas case. The Clerk sent him a § 1983 complaint form and an in forma pauperis application, but he did not return them.

The court ordered him to file a completed complaint and either pay the filing fee or submit a qualifying in forma pauperis motion, denied his premature summons request without prejudice, and granted in part and denied in part his motion to alter or amend.

DISPOSITION

other

CASES CITED

- Rachel v. Troutt, 820 F.3d 390, 397 (10th Cir. 2016)
- Toeve v. Reid, 685 F.3d 903, 916 (10th Cir. 2012)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
DAVID BRIAN MORGAN, Plaintiff, v. No. 1:25-cv-253 JCH/LF UNITED STATES, et al.,
Defendants. MEMORANDUM OPINION AND ORDER This matter is before the Court on Plaintiff's pro se Prisoner Pleading Regarding Civil Rights Claims, in which Plaintiff seeks monetary damages relating to dismissal of a prior prisoner habeas case.

(Doc. 1). It appears Plaintiff wishes to file a 42 U.S.C. § 1983 prisoner civil rights complaint. On March 11, 2025, the Clerk's Office sent Plaintiff a blank § 1983 complaint and application to proceed in forma pauperis, but he has not returned the forms. Plaintiff must file a complaint within thirty (30) days of entry of this Order. By the same deadline, Plaintiff must also prepay the \$405 filing fee or, alternatively, file an in forma pauperis motion along with an account statement reflecting transactions for a six-month period.

See 28 U.S.C. § 1915(a)(2). All filings should include the case number (25-cv-253 JCH/LF), and mailing envelopes should be labeled as Legal Mail and include the inmate number. The failure to timely comply with each directive above may result in dismissal without further notice. Also before the Court is Plaintiff's Request for Issuance of Summons, (Doc. 2). This request is premature.

Because Plaintiff is an inmate who seeks redress from a governmental entity or officer, the Court must screen the Complaint pursuant to 28 U.S.C. § 1915A. Sua sponte dismissal is required if the Complaint fails to state a cognizable claim or seeks monetary relief from a defendant who is immune. See 28 U.S.C. § 1915A(b). Section 1997(e) of Title 42 further provides that a defendant may decline to reply to any action brought by an inmate until the Court orders a response.

See 42 U.S.C. § 1997e(g)(1)-(2). Based on these authorities, the Court denies the Request for Issuance of Summons without prejudice to obtaining relief at a later time. If Plaintiff obtains leave to proceed in forma pauperis and his claims survive initial review, the Clerk's Office and/or U.S.

Marshal will effectuate service on his behalf. See Fed. R. Civ. P. 4(c)(3) (“The court must ... order” court-supplied service “if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).

Plaintiff also filed a Motion to Alter or Amend (Doc. 3), in which he seeks to amend the names of the Defendants, request a jury trial, and have counsel appointed. The Court grants the Motion to Alter or Amend in part. Plaintiff may amend the names of the Defendants and seek a jury trial in the amended complaint that he must file within thirty (30) days.

As to Plaintiff’s request for appointment of counsel, “[c]ourts are not authorized to appoint counsel in 1983 ... cases; instead, courts can only ‘request’ an attorney to take the case” on a pro bono basis. *Rachel v. Troutt*, 820 F.3d 390, 397 (10th Cir. 2016). This decision is a matter of discretion. *Toevis v. Reid*, 685 F.3d 903, 916 (10th Cir. 2012). Relevant factors include “the merits of the claims, the nature of the claims, [the inmate’s] ability to present the claims, and the complexity of the issues.” *Rachel*, 820 F.3d at 397.

Considering these factors, the Court will not ask a local attorney to handle this case on a pro bono basis. The claims do not appear to be especially complex, and Plaintiff’s filings reflect he is able to prosecute this action on a pro se basis.

The request to appoint counsel will therefore be denied without prejudice. 2 IT IS ORDERED that within thirty (30) days of entry of this Order, Plaintiff must: (1) file a complaint on the § 1983 form; and (2) prepay the \$405 filing fee or, alternatively, submit an in forma pauperis motion that attaches an account statement reflecting transactions for a six-month period.

IT IS FURTHER ORDERED that Plaintiff's Request for Issuance of Summons, (Doe. 2) is DENIED without prejudice; and his Motion to Alter or Amend (Doe. 3) is GRANTED in part and DENIED without prejudice in part, as set forth above. Ao UNITED STATES DISTRICT JUDGE