

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

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. *Toeys 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