

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Dwayne A. Miller, Jr. v. Hizel Stevens Hunely

Miller v. Hunely · No. 25-cv-01292-SKC-CYC · Decided February 2, 2026

SUMMARY

The United States District Court for the District of Colorado denied without prejudice plaintiff Dwayne A. Miller Jr.’s motion for appointment of counsel in his prisoner civil-rights action. The court concluded that the request was premature because the case remained at an early stage, the claims were not unusually complex, and their merit was still unclear. The court stated that Miller could renew the request if his circumstances materially changed.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Cyrus Y. Chung
JURISDICTION	United States District Court for the District of Colorado
DECIDED	February 2, 2026
DOCKET	25-cv-01292-SKC-CYC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a pro se prisoner asserting an Eighth Amendment excessive-force claim, moved for appointment of counsel. The magistrate judge denied the motion without prejudice.
STANDARD OF REVIEW	Appointment of counsel for a civil litigant is discretionary and is evaluated under the factors governing the merits of the claims, the complexity of the factual issues, the litigant's ability to investigate and present the case, and relevant special circumstances.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

TOPICS

- civil procedure
- prisoners rights
- civil rights

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner litigation

QUESTIONS PRESENTED

1. Whether a pro se prisoner litigant had established sufficient grounds for the court to request pro bono counsel.
2. Whether the early procedural stage of the case, its apparent lack of unusual complexity, the plaintiff's demonstrated ability to litigate, and the uncertain merits of his claims warranted appointment of counsel.

HOLDINGS

1. A civil claimant does not have a Sixth Amendment or other general constitutional right to appointed counsel merely because the claimant is indigent or proceeding pro se.
2. The court cannot appoint pro bono counsel directly; it may only request that an attorney undertake representation.
3. Appointment of counsel was not warranted because the case was at an early stage, was not unusually complex, the plaintiff had demonstrated an ability to participate in the litigation, and the merits remained uncertain.

KEY QUOTATIONS

“Unlike criminal defendants, civil claimants do not have a Sixth Amendment right to appointed counsel.”
(Analysis)

“The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” (Analysis)

“For the foregoing reasons, the plaintiff’s Prisoner Motion for Appointment of Counsel, ECF No. 53, is DENIED without prejudice.” (Conclusion)

FACTUAL BACKGROUND

Plaintiff, a prisoner proceeding pro se, alleges that Defendant used excessive force against him at the Centennial Correctional Facility on November 1, 2024, in violation of the Eighth Amendment. He also alleges that Defendant violated administrative regulations through the use of force. The action remained at an early pleading stage, with a motion to dismiss pending and the plaintiff having recently filed a Second Amended Complaint.

PROCEDURAL HISTORY

Plaintiff initiated the action pro se on April 24, 2025, was granted leave to proceed in forma pauperis, and was twice ordered to amend his complaint. The court later granted leave to amend again, and the Second Amended Complaint became operative. At the time of the motion, the case was in its early stages and a motion to dismiss was pending.

DISPOSITION

other

CASES CITED

- Fischer v. Dunning, 574 F. App'x 828, 832 (10th Cir. 2014)
- Moaz v. Denver Int'l Airport, 747 F. App'x 708, 711 (10th Cir. 2018) (unpublished)
- Rachel v. Troutt, 820 F.3d 390, 396–97 (10th Cir. 2016)
- Hill v. Smithkline Beecham Corp., 393 F.3d 1111, 1115 (10th Cir. 2004)
- McCarthy v. Weinberg, 753 F.2d 836, 837 (10th Cir. 1985)
- Rucks v. Boergermann, 57 F.3d 978, 979 (10th Cir. 1995)
- Diaz v. USI Ins. Servs., No. 18-cv-03280-NYW, 2019 WL 13444833, at *2 (D. Colo. Mar. 8, 2019)
- Jones v. Pizza Hut, Inc., No. 10-cv-00442-WYD-KMT, 2010 WL 1268048, at *1 (D. Colo. Mar. 30, 2010)
- Vasquez v. U.S. Off. of Pers. Mgmt., 847 F. Supp. 848, 849 (D. Colo. 1994)
- McCullon v. Parry, No. 18-cv-00469-NYW, 2019 WL 4645436, at *5 (D. Colo. Sept. 24, 2019)

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