

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Chris Monroe Cone v. Gamble III, et al.

Cone v. Gamble III · No. 1:24-cv-00799-BAM (PC) · Decided June 6, 2025

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice Plaintiff Chris Monroe Cone’s renewed motion for appointment of counsel in his 42 U.S.C. § 1983 excessive-force action. The court held that Plaintiff had not shown exceptional circumstances warranting a request for voluntary counsel under 28 U.S.C. § 1915(e)(1), and noted that privately retained counsel could enter an appearance without court appointment.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 6, 2025
DOCKET	1:24-cv-00799-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se and in forma pauperis in a 42 U.S.C. § 1983 action, filed a renewed request for appointment of counsel. The district court denied the request without prejudice.
STANDARD OF REVIEW	The court evaluated the request under the exceptional-circumstances standard, considering the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	Unknown; unpublished district court order.
PARTIES	Chris Monroe Cone v. Gamble III, et al.

TOPICS

- prisoners rights
- section 1983
- civil procedure
- cruel and unusual punishment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to appointment of counsel in his prisoner civil-rights action.
2. Whether the circumstances of the case were sufficiently exceptional to justify the court's request for volunteer counsel under 28 U.S.C. § 1915(e)(1).
3. Whether the court could compel an attorney to represent Plaintiff without the attorney's agreement.

HOLDINGS

1. Plaintiff does not have a constitutional right to appointed counsel in this civil-rights action.
2. The court may not require an attorney to represent Plaintiff without the attorney's agreement under 28 U.S.C. § 1915(e)(1).
3. Appointment of volunteer counsel was unwarranted because Plaintiff did not demonstrate exceptional circumstances.

KEY QUOTATIONS

“However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1).” (at 1-2)

“In determining whether “exceptional circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.”” (at 2)

“Accordingly, Plaintiff’s renewed motion to appoint counsel, (ECF No. 31), is HEREBY DENIED, without prejudice.” (at 2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner pursuing an Eighth Amendment excessive-force claim arising from an April 29, 2024 incident at Valley State Prison. He requested appointment of counsel, apparently seeking representation by the law firm of Michael Flynn, and stated that he intended to use settlement funds to pay counsel. The court also considered his ability to litigate the action and the absence of a basis to conclude that he was likely to succeed on the merits.

PROCEDURAL HISTORY

The action proceeds on Plaintiff's second amended complaint against Defendant Gamble for alleged excessive force in violation of the Eighth Amendment. Plaintiff previously sought appointment of counsel and filed a renewed request on June 4, 2025. The court denied the renewed motion because Plaintiff did not establish exceptional circumstances warranting volunteer counsel.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998)
- Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 298 (1989)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 EASTERN DISTRICT OF CALIFORNIA 6 7
CHRIS MONROE CONE, Case No. 1:24-cv-00799-BAM (PC) 8 Plaintiff, ORDER DENYING
RENEWED MOTION FOR APPOINTMENT OF COUNSEL 9 v. (ECF No. 31) 10 GAMBLE III,
et al., 11 Defendants. 12 13 Plaintiff Chris Monroe Cone (“Plaintiff”) is a state prisoner appearing
pro se and in forma 14 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action proceeds on 15 Plaintiff’s second amended complaint against Defendant Gamble for
excessive force in violation 16 of the Eighth Amendment for the incident on April 29, 2024 at
Valley State Prison. 17 On June 4, 2025, Plaintiff filed a document that appears to be a renewed
request for 18 appointment of counsel. (ECF No. 31.) Plaintiff appears to request that this case be
handled by 19 the law firm of Michael Flynn, and Plaintiff states that he is using money from a
settlement to pay 20 for counsel.

(Id.) 21 If Plaintiff is paying for private counsel, Plaintiff does not need the Court to appoint 22
counsel for him. Once Plaintiff has hired an attorney to represent him in this action, that attorney
23 may file an appearance in this case without requiring permission from the Court. 24 If Plaintiff
is requesting that the Court appoint counsel to represent him for free, or to 25 appoint counsel to
represent Plaintiff without the attorney’s agreement, Plaintiff is reminded that 26 he does not have
a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 27 F.3d 1520, 1525
(9th Cir.

1997), rev’d in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 28 1998), and the court
cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1 1915(e)(1). Mallard v.
U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 298 (1989). 2 However, in certain
exceptional circumstances the court may request the voluntary assistance of 3 counsel pursuant to
section 1915(e)(1).

Rand, 113 F.3d at 1525. 4 Without a reasonable method of securing and compensating counsel, the
Court will seek 5 volunteer counsel only in the most serious and exceptional cases. In determining
whether 6 “exceptional circumstances exist, a district court must evaluate both the likelihood of
success on 7 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of
the 8 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

9 The Court has considered Plaintiff's request, but does not find the required exceptional 10
circumstances. Even if it is assumed that Plaintiff has made serious allegations which, if proved,
11 would entitle him to relief, his case is not exceptional. This Court is faced with similar cases
filed 12 almost daily by prisoners suffering from mental and physical health disabilities who must
also 13 conduct legal research, obtain discovery, and litigate their cases without the assistance of
counsel.

14 Furthermore, at this stage in the proceedings, the Court cannot make a determination that 15
Plaintiff is likely to succeed on the merits. Although Plaintiff's complaint has been found to state
16 a cognizable claim against Defendant Gamble, this does not indicate a likelihood of success on
17 the merits.

Finally, based on a review of the record in this case, the Court does not find that 18 Plaintiff
cannot adequately articulate his claims. 19 Accordingly, Plaintiff's renewed motion to appoint
counsel, (ECF No. 31), is HEREBY 20 DENIED, without prejudice. 21 IT IS SO ORDERED. 22
23 Dated: June 6, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 24
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