

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Doss v. Mule Creek State Prison, et al.

No. 2:24-cv-1092 TLN CSK P, United States District Court for the Eastern District of California (May 12, 2025)

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice Robert L. Doss’s motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court found that he had not demonstrated exceptional circumstances and reminded him to file his second amended complaint with any objections to the recommendation of dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 12, 2025
DOCKET	2:24-cv-1092 TLN CSK P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, moved for appointment of counsel.
STANDARD OF REVIEW	Appointment of counsel in a section 1983 action is discretionary and requires consideration of the plaintiff’s likelihood of success on the merits and ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	Unknown; district court order.
PARTIES	Robert L. Doss v. Mule Creek State Prison, et al.

TOPICS

- section 1983
- prisoners rights
- civil rights
- civil procedure
- motions to dismiss

PRACTICE AREAS

- civil rights
- prisoner civil rights
- civil procedure

QUESTIONS PRESENTED

1. Whether the court should appoint counsel for a pro se state prisoner in a 42 U.S.C. § 1983 action.
2. Whether plaintiff demonstrated exceptional circumstances based on the likelihood of success on the merits and his ability to articulate his claims pro se.

HOLDINGS

1. A district court lacks authority to require counsel to represent an indigent prisoner in a section 1983 action, but may request voluntary representation in exceptional circumstances.
2. Plaintiff failed to meet his burden of demonstrating exceptional circumstances warranting appointment of counsel.

KEY QUOTATIONS

“Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel.” (at 1)

FACTUAL BACKGROUND

Robert L. Doss, a state prisoner proceeding without counsel, sought appointment of counsel in his section 1983 action. The court had dismissed his first amended complaint and granted leave to file a second amended complaint, but Doss filed only a notice of amendment and no second amended complaint. The court found that he had not demonstrated exceptional circumstances warranting appointment of counsel.

PROCEDURAL HISTORY

The court had dismissed plaintiff's first amended complaint on March 14, 2025, and granted leave to file a second amended complaint. Plaintiff filed only a notice of amendment, and after receiving additional time and instructions, still did not file a second amended complaint. The court later recommended dismissal of the action, and plaintiff moved for appointment of counsel.

DISPOSITION

other

CASES CITED

- Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

13 MULE CREEK STATE PRISON, et al., 14 Defendants. 15 16 Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. 17 Plaintiff requests that the court appoint counsel.

District courts lack authority to require counsel 18 to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 19 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to 20 voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 21 1015, 1017 (9th Cir.

1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 22 When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s 23 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro 24 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 25 (9th Cir.

2009) (district court did not abuse discretion in declining to appoint counsel). The 26 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances 27 common to most prisoners, such as lack of legal education and limited law library access, do not 28 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

1 Having considered the factors under *Palmer*, the Court finds that plaintiff has failed to 2 || meet his burden of demonstrating exceptional circumstances warranting the appointment of 3 || counsel at this time. Thus, plaintiff’s motion is denied without prejudice. 4 In his motion, plaintiff again expresses confusion as to why the Court does not have his 5 | paperwork.!

(ECF No. 19.) However, the Court dismissed plaintiff’s first amended complaint on 6 || March 14, 2025, and granted him leave to file a second amended complaint within thirty days. 7 || CECF No. 14.) Since that time, plaintiff has only filed a one-page notice of amendment form; no 8 || second amended complaint was included. (ECF No. 15.)

On April 9, 2025, the Court explained 9 || to plaintiff that no second amended complaint was received and granted him an additional 10 || fourteen days in which to file the second amended complaint. (ECF No. 16.) On May 2, 2025, 11 || the Court recommended that this action be dismissed because plaintiff has not filed a second 12 || amended complaint. (ECF No. 18.)

If plaintiff has an original or a copy of his second amended 13 || complaint (not the notice of amendment form), he should file it along with objections to the 14 | findings and recommendations. 15 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for the appointment of 16 || counsel (ECF No. 19) is denied without prejudice. 17 18 || Dated: May12, 2025 A aA 19 Aan Spe | CHI SOO KIM 20 UNITED STATES MAGISTRATE JUDGE 21 | Ardoss1092.31 22 23 24 25 26 27 || | Plaintiff also comments that he does not have another \$350.00 in his inmate trust account.

However, the Court is not requiring plaintiff to pay an additional \$350.00 in connection with this
28 | case.

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