

**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)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF
CALIFORNIA 9 10 ROBERT L. DOSS, No. 2:24-cv-1092 TLN CSK P 11 Plaintiff, 12 v.
ORDER 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.