

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Daley v. Pelayo

No. 1:20-cv-01129 JLT GSA (PC) (E.D. Cal. July 23, 2025) · No. 1:20-cv-01129 JLT GSA (PC) · Decided July
23, 2025

OPINION

(PC)Daley v. Pelayo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 ALCLIFF MORGAN DALEY, No. 1:20-cv-01129 JLT GSA (PC)

12 Plaintiff, ORDER DENYING PLAINTIFF’S MOTION

FOR THE APPOINTMENT OF COUNSEL

13 v. (ECF No. 82) 14 PELAYO, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding
pro se and in forma pauperis, has filed this civil 18 rights action seeking relief under 42 U.S.C. §
1983. The matter was referred to a United States 19 Magistrate Judge pursuant to 28 U.S.C. §
636(b)(1)(B) and Local Rule 302. This case is in the 20 discovery phase of the proceedings. See
ECF No. 79 (second discovery and scheduling order). 21 Plaintiff has filed a motion for the
appointment of counsel. ECF No. 82. For the reasons 22 stated below, the motion will be denied.

23 I. MOTION FOR THE APPOINTMENT OF COUNSEL

24 In support of Plaintiff’s motion for the appointment of counsel, he states in part that he has 25
limited prison law library access; that he is a “layman at law”; that he does not know which 26
papers to file in order to continue to litigate this case; that his first language is not English, and 27
that he has limited formal education. ECF No. 82 at 2-3. Plaintiff further asserts that he cannot 28
1 afford to hire counsel to represent him and that the issues in this case are complex. Id. at 3.

2 II. APPLICABLE LAW

3 District courts lack authority to require counsel to represent indigent prisoners in section 4 1983
cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional 5
circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 6
U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. 7*
Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional 8
circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as 9
well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the 10
legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not 11

abuse discretion in declining to appoint counsel). 12 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. 13 Circumstances common to most prisoners, such as lack of legal education and limited law library 14 access, do not establish exceptional circumstances that warrant a request for voluntary assistance 15 of counsel.

16 III. DISCUSSION

17 Plaintiff's motion for the appointment of counsel must be denied because no exceptional 18 circumstances have been presented in it. In addition, the fact that Plaintiff's complaint has been 19 served and that it is in the discovery phase of the proceedings indicates a possibility that his 20 complaint could be successful on its merits. In addition, the Court notes the fact that this case has 21 been on its docket since 2020, and to date Plaintiff has satisfactorily prosecuted the mater without 22 the assistance of counsel despite any asserted complex legal issues that may exist in it. 23 For these reasons, having considered the factors under Palmer, the Court finds that 24 Plaintiff has failed to meet his burden of demonstrating exceptional circumstances warranting the 25 appointment of counsel at this time. Therefore, his motion will be denied. 26 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the appointment of 27 counsel (ECF No. 82) is DENIED. 28 1 IT IS SO ORDERED. 2 3 Dated: July 23, 2025 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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