

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Anthony Jefferson v. Leonard Moore, et al.

Jefferson v. Moore · No. 23-cv-3263-TC-JBW · Decided May 20, 2026

SUMMARY

The United States District Court for the District of Kansas denied Anthony Jefferson’s motions for appointment of counsel in his pro se 42 U.S.C. § 1983 action alleging Eighth Amendment violations. The court concluded that Jefferson had demonstrated an ability to investigate and present his claims, which did not involve unusually complex factual or legal issues, and denied the motions without prejudice.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Jennifer B. Wieland
JURISDICTION	United States District Court for the District of Kansas
DECIDED	May 20, 2026
DOCKET	23-cv-3263-TC-JBW
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a pro se prisoner proceeding in forma pauperis under 42 U.S.C. § 1983, moved for appointment of counsel in a pending civil rights action.
STANDARD OF REVIEW	The court exercises broad discretion under 28 U.S.C. § 1915(e)(1) when deciding whether to request counsel for an indigent civil litigant, considering the merits of the claims, the complexity of the factual and legal issues, and the prisoner's ability to investigate and present the claims.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Anthony Jefferson v. Leonard Moore, et al.

TOPICS

- civil procedure
- prisoners rights
- section 1983
- civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should appoint counsel for an indigent prisoner proceeding pro se in a civil rights action under 42 U.S.C. § 1983.
2. Whether the plaintiff's restrictive housing, limited access to legal resources, and health problems established sufficient special circumstances to warrant appointment of counsel.

HOLDINGS

1. An indigent prisoner has no constitutional right to appointed counsel in a civil action, and appointment under 28 U.S.C. § 1915(e)(1) is discretionary.
2. In deciding whether to request counsel under § 1915(e)(1), the court considers the merits of the prisoner's claims, the nature and complexity of the factual and legal issues, and the prisoner's ability to investigate the facts and present the claims.
3. Jefferson did not demonstrate sufficient special circumstances to warrant appointment of counsel because he had adequately investigated and presented his claims and the issues were not legally or factually complex.
4. Section 1915(e)(1) authorizes a court only to request an attorney willing to provide representation and does not authorize the court to compel an unwilling attorney to accept the appointment.

KEY QUOTATIONS

“However, under the in forma pauperis statute, the court “may request an attorney to represent” a party unable to afford counsel.”

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

“Plaintiff's motions for appointment of counsel are denied.”

FACTUAL BACKGROUND

Jefferson is incarcerated at the El Dorado Correctional Facility and is proceeding pro se and in forma pauperis. He stated that he was in restrictive housing, had limited access to legal materials, could use a legal tablet only about once per month, and had declining health that limited his ability to litigate. Despite those circumstances, the court found that he had litigated the case for more than two years, gathered facts, presented his claims, and filed pleadings that adequately stated the factual and legal bases of his claims.

PROCEDURAL HISTORY

Jefferson filed a prisoner civil rights action alleging excessive force, deliberate indifference, and cruel and unusual punishment in violation of the Eighth Amendment. The court previously denied motions for appointment of counsel without prejudice. After considering Jefferson's renewed motion and motion to amend for appointment of counsel together, the court denied both motions without prejudice.

DISPOSITION

other

CASES CITED

- Durre v. Dempsey, 869 F.2d 543, 547 (10th Cir. 1989)
- Pinson v. Equifax Credit Info. Servs., Inc., 316 F. App'x 744, 749 (10th Cir. 2009)
- Steffey v. Orman, 461 F.3d 1218, 1224 (10th Cir. 2006)
- Hill v. SmithKline Beecham Corp., 393 F.3d 1111, 1115 (10th Cir. 2004)
- McCarthy v. Weinberg, 753 F.2d 836, 838 (10th Cir. 1985)
- Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa, 490 U.S. 296, 301–08 (1989)
- Castner v. Colo. Springs Cablevision, 979 F.2d 1417, 1421 (10th Cir. 1992)
- Wishneski v. Andrade, 572 F. App'x 563, 570 (10th Cir. 2014)

OPINION

Moore

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

ANTHONY JEFFERSON,

Plaintiff, v. Case No. 23-cv-3263-TC-JBW LEONARD MOORE, et al., Defendants.

MEMORANDUM AND ORDER

Plaintiff Anthony Jefferson, a prisoner incarcerated at the El Dorado Correctional Facility, filed this civil rights action under 42 U.S.C. § 1983, alleging excessive force, deliberate indifference, and cruel and unusual punishment in violation of the Eighth Amendment. Plaintiff is proceeding pro se and has been granted leave to proceed in forma pauperis. This matter is before the Court on Plaintiff's Motion for Appointment of Counsel (Dkt. 79) and Motion to Amend for Appointment of Counsel (Dkt. 80). The Court considers them together as Plaintiff's most recent request for the Court to appoint counsel to represent him in this case. Plaintiff's prior motions for appointment of counsel were denied without prejudice.¹ Although a defendant in a criminal action has a constitutional right to be represented by counsel, it is well settled that a party in a civil action has no constitutional right to appointed counsel.² However, under the in forma pauperis statute, the court "may request an attorney to 1 See Dkts. 5 and 57. 2 See Durre v. Dempsey, 869 F.2d 543, 547 (10th Cir. 1989) ("There is no constitutional right to appointed counsel in a civil case."). represent" a party unable to afford counsel.³ Section 1915(e)(1) grants broad discretion for courts to request counsel to represent an indigent party.⁴ In evaluating a prisoner's request for appointed counsel, the court should consider "the merits of the prisoner's claims, the nature and complexity of the factual and legal issues, and the prisoner's ability to investigate the facts and present his

claims.”⁵ “The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.”⁶ Section 1915(e)(1) merely permits the court to “request” an attorney to represent an indigent party in a civil case and does not authorize the court to require an unwilling attorney to take the case.⁷ More significantly, Congress has not provided any mechanism or funding to compensate counsel appointed in civil cases.⁸ So the court only may seek an attorney willing to be appointed and provide his or her legal services pro bono (without payment). For these reasons, the appointment of counsel in a civil case is rare.⁹ Plaintiff states in his motion that he is currently placed in restrictive housing and has been 3 28 U.S.C. § 1915(e)(1). 4 *Pinson v. Equifax Credit Info. Servs., Inc.*, 316 F. App'x 744, 749 (10th Cir. 2009). 5 *Steffey v. Orman*, 461 F.3d 1218, 1224 (10th Cir. 2006) (quoting *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004)). 6 *Hill*, 393 F.3d at 1115 (quoting *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985)). 7 See *Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 301–08 (1989). 8 See *Castner v. Colo. Springs Cablevision*, 979 F.2d 1417, 1421 (10th Cir. 1992) (“Congress has not provided any mechanism for compensating [] appointed counsel. Thoughtful and prudent use of the appointment power is necessary so that willing counsel may be located without the need to make coercive appointments. The indiscriminate appointment of volunteer counsel to undeserving claims will waste a precious resource and may discourage attorneys from donating their time.”). 9 *Wishneski v. Andrade*, 572 F. App'x 563, 570 (10th Cir. 2014) (“Appointment of counsel in civil cases is the rare exception, not the rule.”). told he will remain there for one year or more. He states he has limited access to legal materials and research. He requested the use of the legal tablet from the librarian but due to the high volume of residents needing it, he may only get to use it once per month. Plaintiff also states his health has been declining and his health issues greatly limit his ability to further litigate his case. Plaintiff's motions for appointment of counsel are denied. Plaintiff, while proceeding pro se, has litigated this case for over two years since December 2023. During that time, he has demonstrated his ability to gather facts and present his claims and arguments in his pleadings and other filings. Plaintiff's pleadings and filings to date adequately present the factual and legal bases for his claims and demonstrate that he understands the basics of his claims. Through his own efforts to date without counsel, Plaintiff's claims have passed the Court's screening. In addition to Plaintiff's demonstrated ability, the legal or factual issues do not appear to be complex. Nor has Plaintiff alleged any special circumstances that would lead the Court to conclude that he is not capable to proceed on his own behalf or set his case apart from other incarcerated individuals proceeding pro se in federal court. IT IS THEREFORE ORDERED that Plaintiff's motions for appointment of counsel (Dkts. 79 and 80) are denied without prejudice. A paper copy of this Order will be mailed to Plaintiff Anthony Jefferson at the address provided in his May 4, 2026 correspondence (Dkt. 78). IT IS SO ORDERED. Dated May 20, 2026, at Kansas City, Kansas. Ee Jennifer B. Wieland U.S. Magistrate Judge

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