

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

Jeremiah Folsom Herbert v. N. Korines, et al.

Herbert · No. 23-CV-9529 (NSR) · Decided December 4, 2025

SUMMARY

The United States District Court for the Southern District of New York denied Plaintiff Jeremiah Folsom Herbert’s requests to conduct depositions remotely and to serve interrogatories as premature while a motion to dismiss remains pending. The Court also denied without prejudice his request for appointment of pro bono counsel, concluding that the case was at an early stage and that no circumstances then warranted appointment.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	Nelson S. Roman
JURISDICTION	United States District Court for the Southern District of New York
DECIDED	December 4, 2025
DOCKET	23-CV-9529 (NSR)
DISPOSITION	other
PROCEDURAL POSTURE	In an ongoing pro se prisoner civil-rights action, Plaintiff moved by letter for remote depositions, leave to serve interrogatories, and appointment of pro bono counsel while a motion to dismiss remained pending.
STANDARD OF REVIEW	Discretionary review of requests for discovery-related relief and appointment of pro bono counsel under 28 U.S.C. § 1915(e)(1), applying the Second Circuit's Hodge framework.
PRECEDENTIAL VALUE	unknown

TOPICS

- discovery dispute
- civil procedure
- motions to dismiss

PRACTICE AREAS

- civil procedure
- prisoner civil rights

QUESTIONS PRESENTED

1. Whether the court should authorize depositions through a remote-conferencing platform and permit interrogatories before resolution of the pending motion to dismiss.
2. Whether Plaintiff should be appointed pro bono counsel under 28 U.S.C. § 1915(e)(1) at the current stage of the litigation.

HOLDINGS

1. The court denied the requests for remote depositions and interrogatories as premature because current motion practice had not been resolved; Plaintiff could renew the requests if the matter proceeded to discovery.
2. Appointment of pro bono counsel was denied without prejudice because the court could not conclude that Plaintiff's position showed a strong or substantial chance of success, the legal issues were not particularly complex, and the record did not establish that Plaintiff could not handle the case without assistance at that stage.

KEY QUOTATIONS

"The proceedings are still in their early stages, and the parties have yet to enter discovery or make summary judgment motions." (at 2)

"Therefore, because the Court does not find any circumstances which warrant the appointment of pro bono counsel at this time, Plaintiff's request for the appointment of pro bono counsel is DENIED without prejudice to renew at a later stage in the proceedings." (at 2)

FACTUAL BACKGROUND

Plaintiff Jeremiah Folsom Herbert was proceeding pro se in a civil-rights action against N. Korines and other defendants. Before discovery began, and while a motion to dismiss was pending, Plaintiff requested remote depositions, permission to serve interrogatories, and appointment of pro bono counsel. The court found the case to be in its early stages, the legal issues not particularly complex, and Plaintiff's likelihood of success and inability to proceed without assistance not sufficiently established.

PROCEDURAL HISTORY

The action was pending before the Southern District of New York, with a motion to dismiss unresolved and discovery not yet commenced. The court denied the requests concerning depositions and interrogatories as premature and denied appointment of pro bono counsel without prejudice to renewal later in the case.

DISPOSITION

other

CASES CITED

- *Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S. 296, 308-09 (1989)

- *Palacio v. City of New York*, 489 F. Supp. 2d 335, 344 (S.D.N.Y. 2007)
- *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997)
- *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989)
- *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986)

OPINION

DOCUMENT ELECTRONICALLY FILED UNITED STATES DISTRICT COURT DOC #: SOUTHERN DISTRICT OF NEW YORK DATE FILED: _ 12/4/2025 JEREMIAH FOLSOM HERBERT, Plaintiff, 23-CV-9529 (NSR) -against- ORDER N. KORINES, ET AL., Defendants. NELSON S. ROMAN, United States District Judge: Pro se Plaintiff Jeremiah Folsom Herbert ('Plaintiff'), by letter dated November 25, 2025, requests that the Court order depositions be conducted through a platform such as Google Teams or Microsoft Teams, seeks leave to file interrogatories, and seeks appointment of pro bono counsel.

Plaintiff's requests regarding depositions and interrogatories are DENIED as premature in light of current motion practice. Upon resolution of the pending motion to dismiss, the matter may proceed to discovery and Plaintiff may renew his requests then. Plaintiff's request for appointment of pro bono counsel is also denied. Unlike in criminal proceedings, the Court does not have the power to obligate attorneys to represent indigent pro se litigants in civil cases.

See *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 308- 09 (1989). Instead, pursuant to 28 U.S.C. § 1915(e)(1), the Court may, at its discretion, order that the Pro Se Office request an attorney to represent an indigent litigant by placing the matter on a list circulated to attorneys who are members of the Court's pro bono panel. See *Palacio v. City of New York*, 489 F. Supp. 2d 335, 344 (S.D.N.Y.

2007). The Second Circuit set forth the standards governing the appointment of counsel in pro se cases in *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989), and *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). These cases direct the district courts to "first determine whether the indigent's position seems likely to be of substance," *Hodge*, 802 F.2d at 61, and then, if this threshold is met, to consider "secondary criteria," including the pro se litigant's "ability to obtain representation independently, and his ability to handle the case without assistance in the light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." *Cooper*, 877 F.2d at 172; accord *Hendricks*, 114 F.3d at 392 (quoting *Hodge*, 802 F.2d at 61-62). "Even where the claim is not frivolous, counsel is often unwarranted where the indigent's chances of success are extremely slim," and the Court should determine whether the pro se litigant's "position seems likely to be of substance," or shows "some chance of success." *Hodge*, 802 F.2d at 60-61.

The proceedings are still in their early stages, and the parties have yet to enter discovery or make summary judgment motions. Thus, the Court is unable to conclude that Plaintiff cannot handle the case without assistance, although this conclusion may change as the action progresses. Furthermore, the Court still cannot ascertain whether Plaintiffs position shows a strong chance of success, nor are the legal issues in this case particularly complex.

Therefore, because the Court does not find any circumstances which warrant the appointment of pro bono counsel at this time, Plaintiff's request for the appointment of pro bono counsel is DENIED without prejudice to renew at a later stage in the proceedings.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff at his address as listed on ECF and to show service on the docket. 30 Ss. Dated: December 4, 2025 oo se White Plains, New York een 5 UNITED STATES DISTRICT JUDGE