

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Keen v. Cross

Keen · No. 2:24-cv-0299-JDP (P) · Decided May 22, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Brandon Keen’s motion to obtain video evidence and motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court held that discovery requests must be served on the opposing parties rather than filed with the court and found that Keen had not demonstrated exceptional circumstances warranting appointed counsel.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 22, 2025
DOCKET	2:24-cv-0299-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	In a prisoner civil-rights action under 42 U.S.C. § 1983, plaintiff moved to obtain video evidence and for appointment of counsel. The district court denied both motions.
STANDARD OF REVIEW	The court applied the procedural requirements governing discovery requests and exercised its discretion under the exceptional-circumstances standard for appointment of counsel in prisoner § 1983 actions.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value.
PARTIES	Brandon Keen v. Cross, Wallace

TOPICS

- discovery dispute
- civil procedure
- section 1983
- prisoners rights
- civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff could obtain video evidence by filing a discovery request with the court rather than serving the request on defendants.
2. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his prisoner § 1983 action.

HOLDINGS

1. Plaintiff's motion to obtain video evidence was denied because discovery requests must be served on the parties, and filing the requests with the court was procedurally improper where no local rule required court review.
2. Plaintiff failed to demonstrate exceptional circumstances warranting appointment of counsel, so the motion for appointment of counsel was denied.

KEY QUOTATIONS

"When determining whether "exceptional circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved." (at 2)

FACTUAL BACKGROUND

Plaintiff is a state inmate proceeding pro se in a § 1983 action against Cross and Wallace. He alleges that defendants knew he had set a fire in his cell but failed to help him, violating the Eighth Amendment. He sought all video evidence and defendants' body-camera footage, and also requested counsel based on his lack of legal knowledge and mental-health issues.

PROCEDURAL HISTORY

Plaintiff, a state inmate proceeding pro se, filed an action alleging that defendants violated his Eighth Amendment rights by failing to assist him after they became aware that he had set a fire in his cell. After entry of a scheduling order, plaintiff filed motions to obtain video evidence and appoint counsel. The court denied both motions without deciding whether plaintiff's discovery request was timely.

DISPOSITION

other

CASES CITED

- *Mallard v. United States District 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

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRANDON KEEN, Case No. 2:24-cv-0299-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 CROSS, et al., 15 Defendants. 16 17 18 Plaintiff, a state inmate proceeding pro se,
brought this § 1983 action against defendants 19 Cross and Wallace, alleging that they violated his
Eighth Amendment rights when they were 20 aware plaintiff had set a fire in his cell, but failed to
help him.

ECF No. 1. Now pending before 21 the court are plaintiff's motion to obtain video evidence, ECF
No. 40, which defendants oppose, 22 ECF No. 41, and motion to appoint counsel, ECF No. 39. I
will deny both plaintiff's motions. 23 Motion to Obtain Video Evidence 24 Plaintiff moves to
obtain "all video evidence" in this matter, and he requests all body 25 camera footage from
defendants.

ECF No. 40. Defendants oppose plaintiff's request, arguing 26 that plaintiff's request is
procedurally improper and untimely. ECF No. 41.1 27 1 In their opposition, defendants argue that
plaintiff's motion is untimely, as the date to 28 serve discovery requests has passed and plaintiff
has not asked for an extension of time to make 1 On February 20, 2025, I issued the scheduling
order in this case, in which I informed both 2 parties that discovery requests must be served by the
party seeking discovery on all parties to the 3 action.

ECF No. 35 at 5. I warned that discovery requests should not be filed with the court 4 unless
required by Local Rules. Id. As it currently stands, no Local Rule requires this court to 5 review
plaintiff's discovery request, and, as I have previously informed plaintiff, see ECF No. 17, 6 court
permission is not necessary for discovery requests. Additionally, to the extent that plaintiff 7
intended to serve defendants with his discovery request by filing them with the court, that 8
approach is improper.

Plaintiff must serve his discovery requests on defendants. See Fed. R. Civ. 9 P. 30-36. As such, I
deny plaintiff's request for video evidence. 10 Motion for Appointment of Counsel 11 Plaintiff
moves for appointment of counsel, generally alleging that he needs counsel to 12 assist him in
bringing this case due to his lack of legal knowledge and mental health issues.

ECF 13 No. 39. District courts lack authority to require counsel to represent indigent prisoners in §
1983 14 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional 15
circumstances, the court may ask an attorney to voluntarily represent such a plaintiff. See 28 16
U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.

1991); *Wood v. 17 Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining
whether "exceptional 18 circumstances" exist, the court must consider plaintiff's likelihood of

success on the merits as 19 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the 20 legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.

2009) (district court did not 21 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional 22 circumstances is on the plaintiff. *Id.* Plaintiff has failed to meet his burden of demonstrating 23 exceptional circumstances warranting the appointment of counsel at this time, and I deny his 24 motion. 25 26 27 discovery requests. ECF No. 41 at 4-5.

Because I am denying plaintiff's motion for video evidence as procedurally improper, this order makes no findings on the timeliness of plaintiff's 28 purported discovery requests. 1 Conclusion 2 Accordingly, it is ORDERED that: 3 1. Plaintiffs motion to obtain video evidence, ECF No. 40, is DENIED. 4 2. Plaintiff's motion for appointment of counsel, ECF No. 39, is DENIED.

5 6 IT IS SO ORDERED. Dated: _ May 22, 2025 q—— 8 JEREMY D. PETERSON 9 UNITED STATES MAGISTRATE JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28