

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kendrid v. Yahiya

No. 2:23-cv-1145 TLN CSK P (E.D. Cal. Apr. 11, 2025) · No. 2:23-cv-1145 TLN CSK P · Decided April 14,
2025

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice Forrest Kendrid’s motion for appointment of counsel in his 42 U.S.C. § 1983 action concerning alleged inadequate mental health treatment and retaliation. The court ordered defendants to complete Kendrid’s deposition by June 17, 2025, and set September 17, 2025, as the deadline for pretrial motions.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 14, 2025
DOCKET	2:23-cv-1145 TLN CSK P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a self-represented former civil detainee proceeding under 42 U.S.C. § 1983, moved for appointment of counsel. The court also addressed scheduling after prior discovery and pretrial-motion deadlines had been vacated because defendants had been unable to depose plaintiff.
STANDARD OF REVIEW	Appointment of counsel for an indigent civil litigant is discretionary and requires consideration of the likelihood of success on the merits and the litigant's ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Forrest Kendrid v. Yahiya, Tucci

TOPICS

prisoners rights

section 1983

civil procedure

discovery dispute

PRACTICE AREAS

civil rights

prisoners' rights

civil procedure

legal representation

QUESTIONS PRESENTED

1. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel under 28 U.S.C. § 1915(e)(1).
2. Whether the court should establish new deadlines for defendants' deposition of plaintiff and for pretrial motions.

HOLDINGS

1. An indigent civil litigant is not generally entitled to appointed counsel, and appointment is appropriate only in exceptional circumstances evaluated by considering the likelihood of success on the merits and the litigant's ability to articulate claims pro se in light of the complexity of the legal issues. Plaintiff did not establish exceptional circumstances, so his motion was denied without prejudice.
2. Because plaintiff's housing situation appeared stable and defendants could potentially depose him at his current facility, the court set June 17, 2025, as the deadline for defendants to complete plaintiff's deposition and September 17, 2025, as the pretrial-motion deadline.

KEY QUOTATIONS

“When determining whether “exceptional circumstances” exist, a court considers both “the likelihood of success on the merits as well as the ability of the petitioner to articulate [the] claims pro se in light of the complexity of the legal issues involved.”” (Section III.B)

“Plaintiff's motion for appointment of counsel (ECF No. 41) is denied;” (Section IV)

FACTUAL BACKGROUND

Plaintiff alleges that mental-health personnel at the California Medical Facility discontinued his suicide watch and mental-health treatment despite knowledge of his self-injurious behavior and mental-health history, after which he continued to harm himself. Plaintiff was later released and reported living in a skilled nursing facility, where he was wheelchair- and bed-bound and lacked access to a law library or legal assistance. Defendants had been unable to depose plaintiff because of his hospitalization, release, and unstable housing, but the court concluded that his housing appeared sufficiently stable to permit a deposition.

PROCEDURAL HISTORY

Plaintiff filed the action on June 15, 2023. The court initially set discovery and pretrial-motion deadlines, later extended them because defendants could not depose plaintiff while he was in a mental-health crisis bed and after his release. After plaintiff failed to update his address, the court issued an order to show cause and later recommended dismissal for failure to prosecute, but vacated that recommendation after plaintiff contacted court

staff. Plaintiff then moved for appointment of counsel, and the court denied the motion without prejudice, set a deadline for defendants to depose plaintiff, and reset the pretrial-motion deadline.

DISPOSITION

other

CASES CITED

- United States v. Sardone, 94 F.3d 1233, 1236 (9th Cir. 1996)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

(PC) Kendrid v. Yahiya

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 FORREST KENDRID, No. 2:23-cv-1145 TLN CSK P

12 Plaintiff, 13 v. ORDER 14 YAHIYA, et al., 15 Defendants. 16

17 I. INTRODUCTION

18 Plaintiff is a former civil detainee, proceeding without counsel, with this civil rights action 19 pursuant to 42 U.S.C. § 1983. This order addresses plaintiff’s motion for appointment of counsel 20 (ECF No. 41) and resets the deadlines for plaintiff’s deposition and pretrial motions.

21 II. BACKGROUND

22 On January 9, 2024, the Court issued a Discovery and Scheduling Order setting the 23 discovery deadline for May 17, 2024 and the pretrial motion deadline for August 23, 2024. (ECF 24 No. 25.) At the time the Discovery and Scheduling Order was filed, plaintiff was incarcerated.

25 On May 3, 2024, defendants filed a motion to extend the discovery and pretrial motion 26 deadlines because they had been unable to depose plaintiff because plaintiff had been in a 27 mental health crisis bed. (ECF No. 33.) On May 6, 2024, the Court granted defendants’ motion 28 filed May 3, 2024 and extended the discovery deadline to July 16, 2024 and the pretrial motion 29 deadline to

1 October 22, 2024. (ECF No. 34.) On July 5, 2024, defendants filed a motion to extend the 2 discovery deadline to September 13, 2024 and the pretrial motion deadline to December 21, 2024. 3 (ECF No. 35.) In the July 5, 2025 motion, defendants stated that they were unable to 4 depose plaintiff prior to plaintiff’s release from the California Medical Facility on or around 5 June 10, 2024. (Id. at 2.) Defendants stated that, due to plaintiff’s unstable housing situation 6 following his release from the California Medical Facility, they were informed that plaintiff’s

deposition could 7 possibly take place in August 2024. (Id. at 5.) Defendants stated that they were at an impasse 8 and could not make significant progress with their defense until they took plaintiff's deposition. 9 (Id. at 2.) 10 On July 17, 2024, this Court ordered plaintiff to show cause within thirty days why this 11 action should not be dismissed for failure to prosecute based on plaintiff's failure to inform the 12 court of his address change following his release from prison. (ECF No. 36.) On July 29, 2024, 13 the July 17, 2024 order served on plaintiff was returned by the U.S. Postal Service. On

14 September 17, 2024, this Court vacated defendants' July 5, 2024 motion to extend the discovery

15 and pretrial motion deadlines and recommended that this action be dismissed based on plaintiff's 16 failure to prosecute. (ECF No. 39.) On September 24, 2024, plaintiff left a telephone message 17 with court staff. (ECF No. 40.) On September 26, 2024, this Court vacated the September 17, 18 2024 findings and recommendations and ordered plaintiff to file a status report within thirty days 19 addressing whether plaintiff was still hospitalized or had been moved to a board and care home. 20 (ECF No. 40.) This Court also ordered plaintiff to address whether defendants could depose him 21 at this time. (Id.) 22 On November 21, 2024, plaintiff filed a motion for appointment of counsel. (ECF No. 23 41.) In this motion, plaintiff stated that he was currently living in a skilled nursing facility for 24 long term medical treatment. (Id. at 1.) Plaintiff stated that he was wheelchair and bed bound. 25 (Id.) Plaintiff stated that he had no access to a law library or legal assistance. (Id.) Plaintiff also 26 stated that his borderline personality disorder prevented plaintiff from functioning in his daily 27 activities and litigating this action. (Id.) Plaintiff did not address whether he could now be 28 deposed.

1 III. MOTION FOR APPOINTMENT OF COUNSEL

2 A. Plaintiff's Claims 3 This action proceeds on plaintiff's original complaint filed June 15, 2023 as to defendants 4 psychiatrist Yahiya and supervising psychologist Tucci. (ECF No. 1.) The alleged deprivations 5 occurred at the California Medical Facility. (Id.) Plaintiff alleges that on or about February 16, 6 2023, plaintiff was admitted to the mental health crisis unit based on suicidal and self-injurious 7 behavior. (Id. at 2.) Plaintiff was placed on suicide watch. (Id.) On February 17, 2023, plaintiff 8 cut himself with a razor. (Id. at 2-3.) Plaintiff was in a state of psychosis and believed that there 9 were bugs in his food. (Id. at 3.) A certified nursing assistant activated her alarm. (Id.) Custody 10 staff observed plaintiff with a razor and sprayed plaintiff through the food port, demanding the 11 razor. (Id.) Plaintiff refused the order. (Id.) A certified nursing assistant later informed plaintiff 12 that there were no bugs in plaintiff's food. (Id.) 13 On February 21, 2023, defendant Yahiya discontinued plaintiff's suicide watch. (Id. at 3.) 14 Defendant Yahiya told plaintiff that it was time for plaintiff to move on to California State 15 Prison-Lancaster and that plaintiff caused too many issues at the California Medical Facility. 16 (Id.) Defendant Yahiya told plaintiff that mental health treatment in the mental health crisis bed 17 was over and that defendant Yahiya and defendant Tucci were in agreement to end all treatment 18 for plaintiff. (Id.) Soon after

receiving this information from defendant Yahiya, plaintiff cut 19 himself again, cutting open his abdomen. (Id.) Plaintiff was seen by defendant Tucci. (Id.) 20 Defendant Tucci told plaintiff that she wanted plaintiff transferred to California State Prison- 21 Lancaster because plaintiff had litigation pending in court against her and mental health staff and 22 defendant Tucci could not allow that to continue. (Id. at 4.) Defendant Tucci told plaintiff that 23 defendant Tucci instructed her staff not to respond to plaintiff's self-injurious behavior, she 24 "cared less" about plaintiff having a razor, and that she was tired of plaintiff's "shit." (Id.) 25 Defendant Tucci also told plaintiff that defendant Yahiya had discontinued plaintiff's treatment 26 for his self-injurious behavior and that suicide watch would not be reinstated. (Id.) Defendant 27 Tucci told plaintiff, "Don't make my job difficult. We can charge you for possession of a weapon 28 and threatening to use it against my staff...you made your bed now sleep in it. If you harm 1 yourself again there will be consequences. You won't be able to plea[d] not guilty by reason of 2 insanity again. I can write a report to the court and I believe you should of never been found 3 insane." (Id.) Plaintiff alleges that defendants knew of plaintiff's self-injurious behavior before 4 they discontinued suicide watch. (Id.) Plaintiff alleges that defendants knew of plaintiff's mental 5 history and delusional thoughts. (Id.) Plaintiff alleges that defendant Yahiya told plaintiff that 6 they would have staff check on plaintiff now and then. (Id. at 5.) Defendant Yahiya told plaintiff 7 that if plaintiff died "between then," plaintiff would not be defendants' problem anymore. (Id.) 8 Defendants then walked away from plaintiff. (Id.) Plaintiff alleges that defendants observed 9 blood on the floor and windows but also observed plaintiff bleeding with a razor. (Id.) Plaintiff 10 gave the razor to custody. (Id.) Plaintiff alleges that defendants' actions triggered plaintiff's 11 psychosis. (Id.) Plaintiff continued to engage in self-injurious behavior and refused to eat until 12 he was sent to California State Prison-Lancaster on or around February 23, 2023. (Id.) Plaintiff 13 also alleges that defendants did not enforce plaintiff's emergency psychotropic medication. (Id.) 14 Plaintiff also alleges that defendants failed to request that custody take the razor away from 15 plaintiff. (Id.) Plaintiff alleges that defendants discontinued his mental health treatment in 16 retaliation for plaintiff's lawsuits and in violation of plaintiff's right to adequate mental health 17 treatment. (Id. at 6.) 18 B. Discussion 19 It is "well-established that there is generally no constitutional right to counsel in civil 20 cases." *United States v. Sardone*, 94 F.3d 1233, 1236 (9th Cir. 1996). Under "exceptional 21 circumstances," a court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. 22 § 1915(e)(1). When determining whether "exceptional circumstances" exist, a court considers 23 both "the likelihood of success on the merits as well as the ability of the petitioner to articulate 24 [the] claims pro se in light of the complexity of the legal issues involved." *Palmer v. Valdez*, 560 25 F.3d 965, 970 (9th Cir. 2009). 26 In the pending motion for appointment of counsel, plaintiff claims that he will have 27 difficulty prosecuting this action because of his medical and mental health problems. Plaintiff 28 also claims that he does not have access to a law library or legal assistance at the skilled nursing 1 | facility where he now lives. This Court also acknowledges that plaintiff's complaint raises 2 | troubling claims against defendants. However, at

this time, this Court cannot determine 3 || plaintiffs likelihood of success on the merits of his claims. This Court also observes that plaintiff 4 || was able to file this action despite plaintiff's medical and mental health problems, which appear 5 || to have existed at the time plaintiff filed the complaint, and was able to file various documents 6 || throughout this litigation. In addition, the legal issues raised in plaintiff's complaint are not 7 || particularly complex. For these reasons, and because the Court has extremely limited resources 8 | to appoint attorneys in civil cases, plaintiff's motion for appointment of counsel is denied without 9 || prejudice.

10 | IV. SCHEDULING OF THIS ACTION

11 As discussed above, the discovery and pretrial motion deadlines for this action were 12 || vacated due to defendants' inability to depose plaintiff. In the motion for appointment of counsel, 13 || plaintiff failed to address whether he may be deposed at the board and care facility where he now 14 | lives. Because plaintiffs housing situation appears stable, it appears that defendants may depose 15 | plaintiff. For this reason, this Court sets a deadline for defendants to depose plaintiff and for the 16 | filing of pretrial motions. 17 Accordingly, IT IS HEREBY ORDERED that: 18 1. Plaintiffs motion for appointment of counsel (ECF No. 41) is denied; 19 2. Defendants shall complete plaintiff's deposition by June 17, 2025; and 20 3. The pretrial motion deadline is September 17, 2025. 21 22 || Dated: April 11, 2025 A aA Aan Spe |

CHI SOO KIM

24 UNITED STATES MAGISTRATE JUDGE

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