

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Carter v. Murphy

Carter · No. 2:24-cv-0165 CKD P · Decided May 7, 2025

SUMMARY

The United States District Court for the Eastern District of California denies without prejudice a state prisoner’s motion for appointment of counsel in a 42 U.S.C. § 1983 action. The court also denies without prejudice the plaintiff’s motion in limine because it is unclear whether the case will proceed to trial.

OPINION

(PC) Carter v. Murphy

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 NATHANAEL JAMES CARTER, JR., No. 2:24-cv-0165 CKD P

12 Plaintiff, 13 v. ORDER

14 D. MURPHY,

15 Defendants. 16

17 Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. 18
Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel 19
to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 20
U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to 21
voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 22
1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 23
When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s
24 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims
pro 25 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965,
970 26 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The
27 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances 28
//// 1 | common to most prisoners, such as lack of legal education and limited law library access,
do not 2 || establish exceptional circumstances that warrant a request for voluntary assistance of
counsel. 3 Having considered the factors under *Palmer*, the court finds that plaintiff has failed to 4

| meet his burden of demonstrating exceptional circumstances warranting the appointment of 5 ||
counsel at this time. 6 Plaintiff has also asked that certain evidence be excluded at trial. Since it is
not clear that 7 || this matter will proceed to trial and, if so, when, that request will be denied
without prejudice to 8 || renewal after a date for trial has been set. 9 Accordingly, IT IS HEREBY
ORDERED that: 10 1. Plaintiffs motion for the appointment of counsel (ECF No. 36) is DENIED
without 11 || prejudice. 12 2. Plaintiffs motion in limine (ECF No. 36) is DENIED without
prejudice. ANI fe fo. AG

4 CAROLYNK.DELANEY

15 UNITED STATES MAGISTRATE JUDGE

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