

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Ryan David Anderson v. Robert M. Van Gerwen, et al.

Anderson v. Van Gerwen · No. 2:20-cv-0246 DC SCR P · Decided December 1, 2025

OPINION

Vangerwen

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RYAN DAVID ANDERSON, No. 2:20-cv-0246 DC SCR P

12 Plaintiff, 13 v. ORDER 14 ROBERT M. VAN GERWEN, et al., 15 Defendants. 16 17 Plaintiff
is incarcerated in Washington State and proceeding pro se and in forma pauperis 18 with a civil
rights action under 42 U.S.C. § 1983. Plaintiff has filed a motion to appoint counsel 19 and
postpone his deposition. (ECF No. 50.) For the reasons set forth below, plaintiff’s motion is 20
denied without prejudice.

21 PLAINTIFF’S MOTION

22 I. Arguments 23 Plaintiff seeks the appointment of counsel under 28 U.S.C. § 1915(e)(1) and
asserts the 24 following exceptional circumstances. First, plaintiff argues that he is indigent and
lacks financial 25 resources to hire an attorney or pay for investigations, document production,
postage, or legal 26 supplies necessary to pursue his case. (ECF No. 50 at 2.) Second, plaintiff
states that his 27 incarceration severely limits his ability to litigate, particularly considering the
fact-intensive and 28 complex nature of his excessive force claims. (Id.) Third, plaintiff points to
his limited education 1 and lack of training in the law, as well as the limited legal research
materials in his minimum- 2 security facility. (Id. at 3.) 3 In addition, plaintiff requests that the
court postpone his deposition pending resolution of 4 this motion because “counsel’s presence is
necessary to ensure his rights are protected during 5 questioning[.]” (Id. at 2.) He also points to
“visual and procedural” disparities at trial that he will 6 face without counsel, such as appearing
before the jury in “prison garb.” (Id.) Defendants did 7 not timely oppose or otherwise respond to
plaintiff’s motion.1 8 II. Legal Standards 9 District courts lack authority under 28 U.S.C. § 1915
to require counsel to represent 10 indigent prisoners in section 1983 cases. *Mallard v. United*
States Dist. Court, 490 U.S. 296, 298 11 (1989). In exceptional circumstances, the court may
request that an attorney voluntarily represent 12 such a plaintiff. See 28 U.S.C. § 1915(e)(1);
Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 13 1991); *Wood v. Housewright*, 900 F.2d 1332,

1335-36 (9th Cir. 1990). The test for exceptional 14 circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and 15 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal 16 issues involved. See *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Weygandt v. 17 Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack 18 of legal education and limited law library access, do not establish exceptional circumstances that 19 would warrant a request for voluntary assistance of counsel. *Wood*, 900 F.2d at 1335; *Riley v. 20 Franke*, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018). 21 Beyond § 1915(e)(1), other sources of law may implicate a request for counsel. For 22 example, appointed counsel may be required in a civil proceeding as an accommodation for a 23 litigant who is disabled. See *Franco-Gonzalez v. Holder*, No. 10-cv-02211 DMG (DTBx), 2013 24 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of 25 mentally disabled individuals in civil immigration proceedings on their request for appointed 26 27 1 Defendants likely lack standing to object to a motion to appoint counsel. See *Bumpus v. Nangalama*, No. 2:12-cv-1102 GEB DAD, 2015 WL 5435364, at *4 (E.D. Cal. Sept. 15, 2015). 28 However, the court notes that defendants took no position on postponing plaintiff's deposition. 1 representatives under the Rehabilitation Act). Due process may also require appointment of 2 counsel in certain proceedings. See *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (analyzing 3 request for appointment of counsel in civil proceeding under the *Mathews v. Eldridge*, 424 U.S. 4 319 (1976), procedural due process framework). 5 III. Analysis 6 Plaintiff has not established exceptional circumstances warranting the appointment of 7 counsel. Plaintiff's indigency, lack of legal training, and limited legal research resources are 8 circumstances common to most prisoners that generally do not warrant the voluntary assistance of 9 counsel. It is difficult to determine plaintiff's likelihood of success at this stage of the 10 proceedings, but it appears that his excessive force claims are not so complex that he cannot 11 articulate them pro se. See *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (finding district 12 court did not abuse discretion in denying counsel to pro se litigant proceeding on Eighth 13 Amendment excessive force claims); *Williams v. Navarro*, No. 3:18-cv-1318 DMS RBM, 2021 14 WL 634752, at *2 (S.D. Cal. Feb. 17, 2021) (finding plaintiff's excessive force claim "not 15 sufficiently complex to warrant appointment of counsel" and collecting cases). While plaintiff's 16 claims are likely fact-intensive, "the need for further factual discovery is not, by itself, sufficient 17 to establish the complexity of the legal issues." *Wilborn*, 789 F.2d at 1331 n.5. 18 Regarding plaintiff's request to postpone his deposition pending the appointment of 19 counsel, plaintiff does not state when the deposition will occur.² Nor does plaintiff identify what 20 particular rights he believes the appointment of counsel would safeguard. Evidence that the 21 questioning will implicate a specific right, such as the Fifth Amendment right against self- 22 incrimination, may, in some situations, warrant appointment of counsel. However, the vague and 23 generalized concerns that plaintiff presents here are insufficient. Finally, plaintiff's concerns 24 regarding visual disparities at trial are premature. Plaintiff will have an opportunity to present 25

these concerns to the trial judge for resolution prior to the trial phase of the case. 26 Accordingly, plaintiff's motion to appoint counsel and to postpone his deposition is 27 2 By separate order, the undersigned granted defendants' request to extend the deadline to 28 conduct discovery to December 11, 2025. (ECF No. 49.) 1 | denied. The denial is without prejudice, which means that plaintiff may renew his motion at a 2 || later stage of the proceedings.

3 CONCLUSION

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to appoint counsel and to 5 || postpone his deposition is DENIED without prejudice. 6 | DATED: December 1, 2025

SEAN C. RIORDAN

9 UNITED STATES MAGISTRATE JUDGE

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