

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kenneth Eugene Gage v. Janan Cavagnolo, et al.

Gage v. Cavagnolo · No. 2:25-cv-3154-DJC-DMC-P · Decided November 25, 2025

SUMMARY

The court denied a pro se prisoner’s motion for appointment of counsel in a 42 U.S.C. § 1983 action. Applying the exceptional-circumstances standard, the court found that the case was not legally or factually complex, the plaintiff could articulate his claims, and the early procedural posture did not establish a likelihood of success on the merits.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 25, 2025
DOCKET	2:25-cv-3154-DJC-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a prisoner proceeding pro se in a 42 U.S.C. § 1983 action, moved for appointment of counsel.
STANDARD OF REVIEW	Appointment of counsel in a § 1983 action is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished district court order; persuasive value only
PARTIES	Kenneth Eugene Gage v. Janan Cavagnolo, et al.

TOPICS

- civil rights
- section 1983
- prisoners rights
- civil procedure

PRACTICE AREAS

- Civil procedure
- Civil rights litigation
- Prisoner civil rights

QUESTIONS PRESENTED

1. Whether the court should appoint counsel for an indigent prisoner pursuing a § 1983 action.
2. Whether Plaintiff established exceptional circumstances based on the likelihood of success on the merits, his ability to articulate his claims, and the alleged complexity of the case.

HOLDINGS

1. A district court may request voluntary assistance of counsel for an indigent prisoner in a § 1983 action only when exceptional circumstances exist, evaluated by considering both the likelihood of success on the merits and the plaintiff's ability to articulate claims in light of the legal and factual complexity.

KEY QUOTATIONS

“A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved.” (at 1)

“Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for the appointment of counsel, ECF No. 6, is denied.” (at 2)

FACTUAL BACKGROUND

Plaintiff is incarcerated and proceeding without counsel in a civil rights action under 42 U.S.C. § 1983. He argued that counsel was warranted because he was indigent, incarcerated, not a trained attorney, in declining health, and facing allegedly complex pretrial matters involving fraud or deception by defendants. The court found that the complaint was not legally or factually complex, that Plaintiff demonstrated sufficient ability to articulate his claims, and that the early stage of the case did not establish a likelihood of success on the merits.

PROCEDURAL HISTORY

The action was pending before the Eastern District of California, and the complaint had not yet been screened or found appropriate for service. Plaintiff moved for appointment of counsel under 28 U.S.C. § 1915(e)(1). The court denied the motion because exceptional circumstances were not established.

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)

OPINION

Cavagnolo

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 KENNETH EUGENE GAGE, No. 2:25-cv-3154-DJC-DMC-P

12 Plaintiff, 13 v. ORDER 14 JANAN CAVAGNOLO, et al., 15 Defendants. 16 17 Plaintiff, a
prisoner proceeding pro se, brings this civil rights action pursuant to 18 42 U.S.C. § 1983. Pending
before the Court is Plaintiff's motion for the appointment of counsel. 19 See ECF No. 6. 20 The
United States Supreme Court has ruled that district courts lack authority to 21 require counsel to
represent indigent prisoners in § 1983 cases. See *Mallard v. United States Dist. 22 Court*, 490 U.S.
296, 298 (1989). In certain exceptional circumstances, the court may request the 23 voluntary
assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See *Terrell v. Brewer*, 935 24 F.2d 1015,
1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 25 A finding
of "exceptional circumstances" requires an evaluation of both the likelihood of success 26 on the
merits and the ability of the plaintiff to articulate his claims on his own in light of the 27
complexity of the legal issues involved. See *Terrell*, 935 F.2d at 1017. Neither factor is 28
dispositive, and both must be viewed together before reaching a decision. See *id.* In *Terrell*, the 1
Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment 2
of counsel because: 3 . . . *Terrell* demonstrated sufficient writing ability and legal knowledge to
articulate his claim. The facts he alleged and the issues he raised were not 4 of substantial
complexity. The compelling evidence against *Terrell* made it extremely unlikely that he would
succeed on the merits. 5 *Id.* at 1017. 6 7 In the present case, the Court does not find the required
exceptional circumstances. 8 Plaintiff argues that the appointment of counsel is warranted because
(1) he is indigent; (2) he is 9 incarcerated; (3) he is not a trained attorney and is therefore unable to
handle complex legal 10 matters; (4) he is in declining health; (5) the matter will involve routine
pretrial motions that 11 require competent counsel; and (6) he is incarcerated due to alleged
deception or fraud by 12 Defendants. The Court finds that these are not exceptional circumstances.
Indigency, lack of legal 13 education, and incarceration are common circumstances for litigants
pursuing pro se civil rights 14 actions arising from the conditions of their confinement. As to
Plaintiff's health concerns, 15 Plaintiff does not assert how his declining health has affected his
ability to properly articulate his 16 claims. Plaintiff's remaining arguments essentially restate that
he is indigent, untrained, and 17 incarcerated. As described above, these are common
circumstances for litigants pursuing pro se 18 civil rights actions. 19 A review of the complaint
suggests that the issues involved in this case are neither 20 legally nor factually complex.
Furthermore, Plaintiff's complaint demonstrates sufficient writing 21 ability and legal knowledge
to articulate a claim on his own. Finally, at this early stage of the 22 proceedings before the
complaint has been screened or found appropriate for service, the Court 23 cannot find that
Plaintiff has established a likelihood of success on the merits. 24 /// 25 /// 26 /// 27 /// 28 ///]

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the 2 || appointment of
counsel, ECF No. 6, is denied. 3 4 || Dated: November 24, 2025 Svc
> DENNIS M. COTA
6 UNITED STATES MAGISTRATE JUDGE
7 8 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28