

**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.

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

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