

**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

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 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