

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-5140

HIRAM CHRISTIAN,

Plaintiff-Appellant,

VERSUS

C. MARTIN, Warden, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(91-CV-169)

(February 16, 1994)

Before WIENER and EMILIO M. GARZA, Circuit Judges, and LITTLE*,
District Judge.

EMILIO M. GARZA, Circuit Judge:**

The plaintiff, Hiram Christian, appeals the magistrate judge's order denying his motion for appointment of counsel.¹ An inmate at the Eastham Unit of the Texas Department of Criminal Justice

* District Judge of the Western District of Louisiana, sitting by designation.

**Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ The magistrate judge's order denying appointment of counsel is an immediately appealable interlocutory order under the "collateral order" doctrine originated by the Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). See *Robbins v. Maggio*, 750 F.2d 405, 411 (5th Cir. 1985) (prisoner suing under 42 U.S.C. § 1983) ("[O]rders denying appointment of counsel to litigants who have clearly demonstrated inability to afford counsel . . . fall into the class of orders envisaged by *Cohen* that are directly appealable as interlocutory orders.").

("TDCJ"), Christian sued various officers and employees of TDCJ under 42 U.S.C. § 1983 (1988), alleging deliberate indifference to and reckless disregard for his serious medical needs, in violation of due process and the Eighth Amendment's prohibition against cruel and unusual punishment. Christian moved for appointment of counsel, arguing that he was unable to investigate and prepare his case unassisted because of the complexity of the medical issues involved, and also because TDCJ officials had failed to comply with his discovery requests. Christian's motion was denied by the magistrate,² because Christian's "request for appointment of counsel [did] not allege sufficient facts from which [the magistrate judge could] determine that appointment of counsel [was] necessary."

We review denial of a motion for appointment of counsel for abuse of discretion. *Jackson v. Dallas Police Dep't.*, 811 F.2d 260, 261 (5th Cir. 1986). "[G]enerally speaking no right to counsel exists in § 1983 actions." *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982) (quoting *Hardwick v. Ault*, 517 F.2d 295, 298 (5th Cir. 1975)). "*Branch* dictates that counsel must be appointed only in exceptional civil rights cases." *Jackson*, 811 F.2d at 262. Four factors should be considered in deciding whether a civil rights case is an exceptional case requiring the appointment of counsel:

- (1) the type and complexity of the case;

² Christian's suit was referred to a magistrate, pursuant to 28 U.S.C. § 636(b)(1)(A) (1988).

- (2) whether the indigent is capable of adequately presenting his case;
- (3) whether the indigent is in a position to investigate the case adequately; and
- (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.

Id. (citing *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982)).

None of these factors militates in favor of a finding that Christian presents an exceptional case for appointment of counsel. His case is not especially complex, as he simply alleges that he has sinusitis, tuberculosis, and an injured hand which make it impossible for him to work in the prison garment shop, and that the defendants have failed to take action to provide him with a different work assignment. Christian is in no worse position to investigate the evidence in his case than are hundreds of other inmate litigators. Neither is there anything about the evidence in this case which will require an exceptional degree of skill in presenting evidence. If there is anything exceptional about Christian's case it is the fact that he is considerably more literate and skilled in presenting factual and legal arguments than many inmate litigators. Consequently, Christian does not present an exceptionally compelling case for appointment of counsel, and the magistrate judge did not abuse her discretion by denying Christian's motion.³

³ The magistrate judge did not enter detailed findings of fact in denying Christian's motion. "In considering motions for appointment of counsel in section 1983 cases, district courts

We therefore **AFFIRM**.

should make specific findings on each of the *Ulmer* factors rather than deciding the motion in a conclusory manner. The failure to issue findings frustrates appellate review and cannot ordinarily be accepted." *Jackson v. Dallas Police Dep't.*, 811 F.2d 260, 262 (5th Cir. 1986). However, where the record demonstrates with sufficient clarity that no abuse of discretion was committed, a remand is not necessary. *See id.*