

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Clark v. Wong

Clark v. Wong · No. 2:23-CV-1439-DMC-P · Decided June 11, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Bryan Clark’s motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court found no exceptional circumstances, while granting his motion for an extension of time and deeming his opposition to the defendant’s summary-judgment motion timely.

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	June 11, 2025
DOCKET	2:23-CV-1439-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for appointment of counsel and for an extension of time to oppose Defendant's motion for summary judgment.
STANDARD OF REVIEW	The court evaluated appointment of counsel under the exceptional-circumstances standard, considering the plaintiff's likelihood of success on the merits and ability to articulate claims in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unpublished and nonprecedential district court order

TOPICS

- civil procedure
- section 1983
- prisoners rights
- summary judgment

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner civil rights

QUESTIONS PRESENTED

1. Whether exceptional circumstances warranted the court's request for voluntary appointment of counsel under 28 U.S.C. § 1915(e)(1).
2. Whether Plaintiff should receive additional time to oppose Defendant's motion for summary judgment.

HOLDINGS

1. Appointment of counsel was not warranted because Plaintiff failed to establish exceptional circumstances.
2. The motion for an extension of time was granted, and Plaintiff's opposition filed on April 23, 2025, was deemed timely.

KEY QUOTATIONS

“The test for “exceptional circumstances” requires the Court to evaluate the plaintiff’s likelihood 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.” (1)

“Plaintiff’s motion for the appointment of counsel, ECF No. 29, is denied.” (2)

“Plaintiff’s motion for an extension of time, ECF No. 28, to file an opposition to Defendant’s motion for summary judgment is granted and Plaintiffs opposition brief filed on April 23, 2025, is deemed timely.” (2)

FACTUAL BACKGROUND

Plaintiff is a prisoner proceeding pro se in a civil rights action and alleged that he had lost sight in his right eye and was suffering from headaches. Despite those difficulties, he was able to prosecute the action and file an opposition to Defendant's motion for summary judgment. The court found no particular likelihood of success on the merits and no unusual factual or legal complexity.

PROCEDURAL HISTORY

Plaintiff, a pro se prisoner, brought a 42 U.S.C. § 1983 action. While Defendant's motion for summary judgment was pending, Plaintiff moved for appointment of counsel and an extension of time to file his opposition. The court denied appointment of counsel, granted the extension, and deemed Plaintiff's opposition timely.

DISPOSITION

other

CASES CITED

- Mallard v. United States Dist. 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)
- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)

OPINION

(PC) Clark v. Wong

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 BRYAN CLARK, No. 2:23-CV-1439-DMC-P

12 Plaintiff, 13 v. ORDER

14 WONG,

15 Defendant. 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 ECF No.
29. Defendant has filed an opposition. ECF No. 32. 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 district court may 23 request the voluntary assistance of counsel
pursuant to 28 U.S.C. § 1915(e)(1). See *Terrell v. 24 Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);
Wood v. Housewright, 900 F.2d 1332, 1335-36 25 (9th Cir. 1990). The test for “exceptional
circumstances” requires the Court to evaluate the 26 plaintiff’s likelihood success on the merits
and the ability of the plaintiff to articulate his claims 27 on his own in light of the complexity of
the legal issues involved. See *Wilborn v. Escalderon*, 28 789 F.2d 1328, 1331 (9th Cir. 1986);
Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). 1 || Circumstances common to most
prisoners, such as lack of legal education and limited law library 2 || access, do not establish
exceptional circumstances that would warrant a request for voluntary 3 || assistance of counsel. 4
In the present case, the Court does not at this time find the required exceptional 5 || circumstances.
Plaintiff contends that appointment of counsel is warranted because he has lost 6 || the sight in his
right eye and is suffering from headaches. See ECF No. 29. While the Court 7 || sympathizes with
Plaintiff's loss of eyesight, it does not appear that this has prevented Plaintiff 8 | from prosecuting
his action on his own. Specifically, despite Plaintiffs vision difficulties, 9 | Plaintiff has been able
to file an opposition to Defendant’s motion for summary judgment.’ See 10 || ECF No. 30.
Moreover, given the pending motion for summary judgment, the Court cannot say 11 | that
Plaintiff has established a particular likelihood of success on the merits which would support 12 ||
the appointment of counsel. Finally, a review of the issues presented in this case reflects that they
13 || are neither factually nor legally complex such that Plaintiff will be unable to proceed on his
own. 14 Accordingly, IT IS HEREBY ORDERED as follows: 15 1. Plaintiff's motion for the
appointment of counsel, ECF No. 29, is denied. 16 2. Plaintiff's motion for an extension of time,
ECF No. 28, to file an 17 || opposition to Defendant’s motion for summary judgment is granted

and Plaintiffs opposition 18 || brief filed on April 23, 2025, is deemed timely. 19 20 | Dated: June 11, 2025 Co

21 DENNIS M. COTA

02 UNITED STATES MAGISTRATE JUDGE

23 24 25 26 27 The Court will grant Plaintiff's motion for an extension of time to file an opposition, ECF No. 28, and deem Plaintiff's opposition brief to be timely. Defendant's motion for summary judgment will be addressed 28 | separately.