

**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

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. §
19 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, 19 ECF No.
20 29. Defendant has filed an opposition. ECF No. 32. 20 The United States Supreme Court has ruled
21 that district courts lack authority to require counsel to represent indigent prisoners in § 1983
22 cases. See *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In certain
23 exceptional circumstances, the district court may request the voluntary assistance of counsel
24 pursuant to 28 U.S.C. § 1915(e)(1). See *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);
25 *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for “exceptional
26 circumstances” requires the Court to evaluate the plaintiff’s likelihood success on the merits
27 and the ability of the plaintiff to articulate his claims on his own in light of the complexity of
28 the legal issues involved. See *Wilborn v. Escalderon*, 28 789 F.2d 1328, 1331 (9th Cir. 1986);
29 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). 1 || Circumstances common to most
30 prisoners, such as lack of legal education and limited law library 2 || access, do not establish
31 exceptional circumstances that would warrant a request for voluntary 3 || assistance of counsel. 4
32 In the present case, the Court does not at this time find the required exceptional 5 || circumstances.
33 Plaintiff contends that appointment of counsel is warranted because he has lost 6 || the sight in his
34 right eye and is suffering from headaches. See ECF No. 29. While the Court 7 || sympathizes with
35 Plaintiff's loss of eyesight, it does not appear that this has prevented Plaintiff 8 | from prosecuting
36 his action on his own. Specifically, despite Plaintiffs vision difficulties, 9 | Plaintiff has been able
37 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.