

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Andrew Clark v. J. Walters

No. 1:23-cv-01305-SAB (PC) (E.D. Cal. Oct. 7, 2025) · No. 1:23-cv-01305-SAB (PC) · Decided October 7,
2025

SUMMARY

The United States District Court for the Eastern District of California denied Andrew Clark’s motion for appointment of counsel without prejudice in his pro se civil rights action against J. Walters. The court held that Clark had not demonstrated exceptional circumstances under 28 U.S.C. § 1915(e)(1), particularly because the likelihood of success could not yet be determined and he appeared able to articulate his claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 7, 2025
DOCKET	1:23-cv-01305-SAB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis in a civil rights action, moved for appointment of counsel under 28 U.S.C. § 1915(e)(1).
STANDARD OF REVIEW	Appointment of counsel for an indigent civil litigant is evaluated under the exceptional-circumstances standard, considering both the likelihood of success on the merits and the plaintiff’s ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order

TOPICS

- civil rights
- prisoners rights
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to appointment of counsel in his prisoner civil rights action.
2. Whether exceptional circumstances existed under 28 U.S.C. § 1915(e)(1) based on the likelihood of success on the merits and Plaintiff's ability to articulate his claims pro se.

HOLDINGS

1. An indigent plaintiff does not have a constitutional right to appointed counsel in a civil rights action, and the court cannot require an attorney to represent the plaintiff under 28 U.S.C. § 1915(e)(1).
2. Exceptional circumstances require evaluation of both the plaintiff's likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues. Plaintiff did not establish exceptional circumstances warranting appointment of counsel.

KEY QUOTATIONS

“The test for exceptional circumstances requires the Court to evaluate the Plaintiffs likelihood of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.” (1)

“Accordingly, Plaintiff's motion for appointment of counsel is denied, without prejudice.” (2)

FACTUAL BACKGROUND

Plaintiff is incarcerated, proceeding pro se and in forma pauperis, and asserted a retaliation claim against J. Walters. He requested appointed counsel, citing the early stage of the case, difficulties associated with litigation, and a legitimate learning disability. The court found that the record did not indicate that Plaintiff was unable to adequately articulate his claims, whether alone or with inmate assistance.

PROCEDURAL HISTORY

The action included a cognizable retaliation claim against Defendant J. Walters. At an early stage of the proceedings, Plaintiff moved for appointment of counsel. The court denied the motion without prejudice because it could not determine a likelihood of success on the merits and found no showing that Plaintiff was unable to articulate his claims pro se.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)

- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)
- Courtney v. Kandel, No. 2:18-CV-2052-KJM-DMC-P, 2020 WL 1432991, at *1 (E.D. Cal. Mar. 24, 2020)

OPINION

Walters

PER CURIAM.

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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8

9 ANDREW CLARK, No. 1:23-cv-01305-SAB (PC)

10 Plaintiff, ORDER DENYING PLAINTIFF’S MOTION

FOR APPOINTMENT OF COUNSEL,

11 v. WITHOUT PREJUDICE

12 J. WALTERS, (ECF No. 23)

13 Defendant. 14

15 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action. 16 Currently before the Court is Plaintiff’s motion for appointment of counsel, filed October 17 2, 2025. (ECF No. 23.) 18 Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to 20 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional 22 circumstances the court may request the voluntary assistance of counsel pursuant to section 23 1915(e)(1). *Rand*, 113 F.3d at 1525. 24 Without a reasonable method of securing and compensating counsel, the court will seek 25 volunteer counsel only in the most serious and exceptional cases. In determining whether 26 “exceptional circumstances exist, the district court must evaluate both the likelihood of success 27 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the 28 1 | complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted). 2 The test for exceptional circumstances requires the Court to evaluate the Plaintiffs 3 | likelihood of success on the merits and the ability of the Plaintiff to articulate his claims pro se in 4 | light of the complexity of the legal issues involved. See *Wilborn v. Escalderon*, 789 F.2d 1328, 5 1331 (9th Cir. 1986); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances 6 || common to most prisoners, such as lack of legal education and limited law library access, do not 7 | establish exceptional circumstances that would warrant a request for voluntary assistance of 8 | counsel. Although the Court has found that Plaintiff states a cognizable retaliation claim against 9 | Defendant J. Walters, at this early stage of the proceedings the Court cannot determine the 10 | likelihood of success on his claim. The fact an

attorney may be better able to perform research, 11 || investigate, and represent a plaintiff does not change the analysis. There is little doubt most pro se 12 | litigants “find it difficult to articulate [their] claims,” and would be better served with the 13 | assistance of counsel. Wilborn, 789 F.2d at 1331; Courtney v. Kandel, No. 2:18-CV-2052-KJM- 14 | DMC-P, 2020 WL 1432991, at *1 (E.D. Cal. Mar. 24, 2020) (challenges conducting discovery 15 | and preparing for trial “are ordinary for prisoners pursuing civil rights claim” and cannot form the 16 | basis for appointment of counsel). In addition, despite Plaintiff's contention that he has a 17 | legitimate learning disability, there is no indication from the record that Plaintiff is unable to 18 || adequately articulate his claims-whether alone or with inmate assistance. Any future inability of 19 | another inmate to assist Plaintiff does not amount to exceptional circumstances warranting the 20 | appointment of counsel. Accordingly, Plaintiff's motion for appointment of counsel is denied, 21 | without prejudice. 22

73 IT IS SO ORDERED. DAA Le

24 | Dated: _ October 7, 2025 "

STANLEY A. BOONE

25 United States Magistrate Judge 26 27 28