

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

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. 19 *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 21 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