

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Haggerty v. Lynch

Haggerty · No. 2:21-cv-01248-DJC-AC · Decided May 6, 2025

OPINION

(PC) Haggerty v. Lynch

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 LEE E. HAGGERTY, No. 2:21-cv-01248-DJC-AC

12 Plaintiff, 13 v. ORDER 14

JEFF LYNCH

15 Defendants. 16

17 18 On April 28, 2025, Plaintiff Lee Haggerty filed a Motion for an Extension of Time 19 and a
Motion to Appoint Counsel. (Mot. (ECF No. 67).) Specifically, Plaintiff cited to 20 his limited
reading and writing abilities and explained that he lost access to his legal 21 materials after the
individual who possessed them was placed in administrative 22 segregation. (Id. at 1.) 1 23
Regarding Plaintiff’s request for counsel, while the Court sympathizes with the 24 challenges
Plaintiff has identified, a person generally has no right to counsel in civil 25 actions. See *Palmer v.*
Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (citing *Storseth v.* 26 27 1 The Court appreciates efforts
by Mr. Lodholz to secure law library access for the Plaintiff. (See ECF No. 28 68 at 2). 1
Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981)). However, under “exceptional 2 circumstances”
the court may request counsel for indigent civil litigants pursuant to 28 3 U.S.C. § 1915(e)(1). Id.;
see 28 U.S.C. § 1915(e)(1). In making this determination, 4 courts must consider whether (1) there
is a likelihood of success on the merits; and (2) 5 the prisoner is unable to articulate his claim in
light of the complexity of the legal 6 issues involved. *Cano v. Taylor*, 739 F.3d 1214, 1218 (9th
Cir. 2014). Neither factor is 7 dispositive; rather they must be considered cumulatively. Id.
Circumstances most 8 common to prisoners, such as lack of legal education and limited law
library access, 9 do not establish exceptional circumstances that would warrant a request for
voluntary 10 assistance of counsel. The fact that the pro se litigant would be better served with the
11 assistance of counsel does not necessarily qualify the issues involved as complex. See 12 *Rand*
v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on other grounds, 13 154 F.3d 952,
954 n.1 (9th Cir. 1998) (acknowledging that any pro se litigant would be 14 better served with the

assistance of counsel). Considering these facts in light of the 15 case now pending before the Court, the Court does not find this to present 16 exceptional circumstances and will deny the request for counsel. 17 Turning to the request for an extension of time, the Court GRANTS Plaintiff 18 additional time to submit his Final Pretrial Statement, and will set the deadline for May 19 27, 2025, the date on which the Court had previously ordered Plaintiff to file his 20 witness and exhibit lists. Defendants may file a written response 7 days after receiving 21 Plaintiff's statement, if they are unable to address those matters at the Final Status 22 Conference. Plaintiff is cautioned, however, that if Plaintiff fails to comply with the 23 Court's prior order to submit witness and exhibit lists by May 27, 2025, the Court 24 may consider imposing evidentiary sanctions in light of the prejudice the failure to 25 timely identify witnesses and exhibits could cause Defendants. Evidentiary sanctions 26 could include an order preventing Plaintiff from calling a witness or introducing an 27 exhibit not identified by Defendants in their Final Pretrial Statement. 28 //// 1 Therefore, IT IS HEREBY ORDERED THAT: 2 1. Plaintiff's Motion to Appoint Counsel is DENIED. 3 2. Plaintiff's Motion for an extension of time is GRANTED. Plaintiff is ordered to 4 file his Final Pretrial Statement on or by May 27, 2025. 5 6 Dated: May 5, 2025 /s/ Daniel J. Calabretta

THE HONORABLE DANIEL J. CALABRETTA

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UNITED STATES DISTRICT JUDGE

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