

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Betts v. Terronez

No. 25-cv-1296-JES-DDL (S.D. Cal. July 25, 2025) · No. 25-cv-1296-JES-DDL · Decided July 25, 2025

SUMMARY

The United States District Court for the Southern District of California denied without prejudice Domenic Jarelle Betts’s motion for appointment of counsel in his pro se 42 U.S.C. § 1983 action. The court held that Betts had not shown exceptional circumstances because the record did not establish a likelihood of success at that early stage or an inability to articulate his claims.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	David D. Leshner
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 25, 2025
DOCKET	25-cv-1296-JES-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a pro se prisoner proceeding in forma pauperis under 42 U.S.C. § 1983, moved for appointment of counsel.
STANDARD OF REVIEW	The court applied the discretionary exceptional-circumstances standard for appointment of counsel in civil cases, considering cumulatively 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PRECEDENTIAL VALUE	Unpublished district court order; persuasive value only
PARTIES	Domenic Jarelle Betts v. Lisa Terronez

TOPICS

- prisoners rights
- civil rights
- section 1983
- civil procedure

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner litigation
- appointment of counsel

QUESTIONS PRESENTED

1. Whether an indigent prisoner proceeding pro se established exceptional circumstances warranting appointment of counsel in a civil-rights action.
2. Whether the plaintiff's likelihood of success on the merits and ability to articulate his claims justified appointment of counsel when considered cumulatively.

HOLDINGS

1. A district court may request counsel for an indigent civil litigant only upon a showing of exceptional circumstances, evaluated by considering cumulatively the likelihood of success on the merits and the litigant's ability to articulate claims in light of the complexity of the legal issues.
2. Betts did not establish exceptional circumstances warranting appointment of counsel because the early stage of the proceedings made likelihood of success impossible to predict and he had shown that he could effectively articulate his claims pro se.

KEY QUOTATIONS

“There is no absolute right to counsel in civil proceedings.” (Opinion at 1)

“Neither factor is “dispositive” but “must be considered cumulatively.”” (Opinion at 1)

“Plaintiff’s Motion for Appointment of Counsel is therefore *DENIED WITHOUT PREJUDICE*.” (Opinion at 4)

FACTUAL BACKGROUND

Betts is incarcerated at Salinas State Valley Prison and is proceeding pro se and in forma pauperis in a § 1983 action. He asserted indigence, limited legal knowledge and access to legal materials, mental-health needs, difficulty retaining counsel, and alleged mail tampering by prison staff. The court found that he had effectively articulated his claims and had filed a complaint alleging a plausible First Amendment retaliation claim, but that the early stage of the case provided no basis to predict success on the merits.

PROCEDURAL HISTORY

Betts filed a civil-rights action alleging a plausible First Amendment retaliation claim and moved for appointment of counsel. The district court denied the motion without prejudice, concluding that Betts had not shown exceptional circumstances because the record was too early to establish a likelihood of success and he had demonstrated an ability to articulate his claims.

DISPOSITION

other

CASES CITED

- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Burns v. County of King, 883 F.2d 819, 823 (9th Cir. 1989)
- Okler v. MCC IMU Prison, No. 3:18-cv-05458-RJB-TLF, 2019 WL 461143, at *1 (W.D. Wash. Feb. 5, 2019)
- Cano v. Taylor, 739 F.3d 1214, 1218 (9th Cir. 2014)
- Campos v. K.U.S.I. News Media, No. 3:19-cv-01455-BAS-AGS, 2019 WL 4674290, at *2 (S.D. Cal. Sept. 24, 2019)
- Williams v. Lozano, No. 1:15-cv-01250-BAM (PC), 2018 WL 558765, at *1 (E.D. Cal. Jan. 25, 2018)

OPINION

Betts v. Terronez

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DOMENIC JARELLE BETTS, Case No.: 25-cv-1296-JES-DDL 12 Plaintiff,

ORDER DENYING PLAINTIFF’S

13 v. MOTION FOR APPOINTMENT

OF COUNSEL WITHOUT

14 LISA TERRONEZ,

PREJUDICE

15 Defendants. [Dkt. No.8] 16 17 18 Plaintiff Domenic Jarelle Betts, an inmate currently incarcerated at Salinas 19 State Valley Prison (“SVSP”), is proceeding pro se and in forma pauperis in this 20 civil rights action pursuant to 42 U.S.C. § 1983. See Docket. Before the Court is 21 Plaintiff’s Motion for Appointment of Counsel. Dkt. No. 8 (“Mot.”). For the reasons 22 set forth below, Plaintiff’s Motion is DENIED WITHOUT PREJUDICE.

23 MOTION FOR APPOINTMENT OF COUNSEL

24 On July 14, 2025, Plaintiff submitted a Motion for Appointment of Counsel 25 that was entered onto the docket on July 18, 2025. Mot. Plaintiff argues that 26 appointing counsel is appropriate here because he is indigent and incarcerated 27 with limited legal knowledge and access to legal materials. Id. at 1. Additionally, 28 Plaintiff notes that his case is complex and that he requires treatment and 1 assistance from the mental health staff and clinicians. Id. Plaintiff also states that 2 he has been unable to retain an attorney despite his attempts to do so and that his 3 mail has been subject to tampering by SVSP staff. Id. 4

DISCUSSION

5 There is no absolute right to counsel in civil proceedings. Palmer v. Valdez, 6 560 F.3d 965, 970 (9th Cir. 2009). However, District Courts have discretion to 7 “request” that an attorney represent indigent civil litigants upon a showing of 8 “exceptional circumstances.” See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 9 1991); Burns v. County of King, 883 F.2d 819, 823 (9th Cir.

1989). “That a pro se litigant may be better served with the assistance of counsel is not the test.” *Okler 11 v. MCC IMU Prison*, No. 3:18-cv-05458-RJB-TLF, 2019 WL 461143, at *1 (W.D. 12 Wash. Feb. 5, 2019). Instead, the Court “must determine whether . . . there is a 13 likelihood of success on the merits” and whether “the prisoner is unable to 14 articulate his claims in light of the complexity of the legal issues involved.” *Cano 15 v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014). Neither factor is “dispositive” but 16 “must be considered cumulatively.” *Id.* 17 A. Likelihood of Success 18 The Court first considers whether Plaintiff is likely to succeed on the merits 19 of his claim. Given the early stage of the proceedings, there is no basis upon which 20 the Court can predict Plaintiff’s success at trial. See *Campos v. K.U.S.I. News 21 Media*, No. 3:19-cv-01455-BAS-AGS, 2019 WL 4674290, at *2 (S.D. Cal. Sept. 24, 22 2019) (denying prisoner’s motion to appoint counsel where it “[was] simply too 23 soon to tell whether he will be likely to succeed on the merits of any potential 24 constitutional claim”). The Court therefore finds that this factor weighs against the 25 appointment of counsel. 26 B. Plaintiff’s Ability to Pursue His Claims 27 “When determining whether ‘exceptional circumstances’ exist, a court must 28 consider . . . the ability of the petitioner to articulate his claims pro se in light of the 1 complexity of the legal issues involved.” *Palmer*, 560 F.3d at 970 (emphasis 2 added). Plaintiff argues that he is in the mental health program and will soon need 3 an increased level of care that will limit his ability to litigate this case, and that 4 having an attorney would better enable him to present evidence, cross examine 5 witnesses and present a winning case. Mot. at 1. 6 As an initial matter, the Court has reviewed all of the documents filed by 7 Plaintiff and finds that Plaintiff has thus far been able to effectively articulate his 8 claims. See Dkt. No. 1; see also Mot. In addition to filing a complaint that alleged 9 a plausible First Amendment retaliation claim, Plaintiff successfully filed a renewed 10 motion to proceed in forma pauperis and the instant motion. See Dkt. Nos. 4, 5; 11 see also Mot. Additionally, Plaintiff’s need to conduct discovery and examine 12 witnesses does not constitute exceptional circumstances. These tasks are 13 common among all participants in civil litigation and not unique to Plaintiff. See 14 *Williams v. Lozano*, No. 1:15-cv-01250-BAM (PC), 2018 WL 558765, at *1 (E.D. 15 Cal. Jan. 25, 2018) (“Even if it is assumed that [p]laintiff is not well versed in the 16 law and that he has made serious allegations which, if proved, would entitle him to 17 relief, his case is not exceptional. This Court is faced with similar cases filed by 18 prisoners proceeding pro se and suffering from physical and mental health 19 conditions almost daily. These prisoners also must conduct legal research and 20 prosecute claims without the assistance of counsel.”). Accordingly, the Court finds 21 Plaintiff has not shown he lacks the ability to pursue his claims. This factor weighs 22 against the appointment of counsel.

23 CONCLUSION

24 For the reasons set forth above, the Court finds Plaintiff has not met his 25 burden to establish exceptional circumstances warranting the appointment of 26 counsel. Plaintiff’s Motion for Appointment of Counsel is therefore DENIED 27 WITHOUT PREJUDICE. Plaintiff may renew his request if his situation changes 28 such that he can make the necessary showing that he is both

likely to succeed on 1 the merits of his claims, and unable to competently articulate those claims.
Cano, 2 F.3d at 1218. 3 IS SO ORDERED. 4 |! Dated: July 25, 2025 — ZL Tb Lb a 6 “Hon.
DavidD.LeshnerSS~STMS 7 United States Magistrate Judge 8 9 10 11 12 13 14 15 16 17 18 19 20
21 22 23 24 25 26 27 28

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