

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Martinez v. Heath, et al.

Martinez · No. 2:24-cv-0516-JDP (P) · Decided October 6, 2025

OPINION

Heath

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 FRED MARTINEZ, Case No. 2:24-cv-0516-JDP (P) 12 Plaintiff, 13 v. ORDER 14 HEATH,
et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se in an action brought
under 42 U.S.C. § 1983. 18 Plaintiff requests that the court appoint counsel. District courts lack
authority to require counsel 19 to represent indigent prisoners in section 1983 cases. *Mallard v.*
United States Dist. Court, 490 20 U.S. 296, 298 (1989). In exceptional circumstances, the court
may request an attorney to 21 voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1);
Terrell v. Brewer, 935 F.2d 22 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332,
1335-36 (9th Cir. 1990). 23 When determining whether “exceptional circumstances” exist, the
court must consider plaintiff’s 24 likelihood of success on the merits as well as the ability of the
plaintiff to articulate his claims pro 25 se in light of the complexity of the legal issues involved.
Palmer v. Valdez, 560 F.3d 965, 970 26 (9th Cir. 2009) (district court did not abuse discretion in
declining to appoint counsel). The 27 burden of demonstrating exceptional circumstances is on the
plaintiff. *Id.* Circumstances 28 common to most prisoners, such as lack of legal education and
limited law library access, do not 1 | establish exceptional circumstances that warrant a request for
voluntary assistance of counsel. 2 Having considered the factors under *Palmer*, the court finds that
plaintiff has failed to 3 | meet his burden of demonstrating exceptional circumstances warranting
the appointment of 4 | counsel at this time. 5 Accordingly, IT IS HEREBY ORDERED that
plaintiff’s motion for the appointment of 6 | counsel, ECF No. 37, is DENIED without prejudice. 7
| IT IS SO ORDERED. 9 | Dated: _ October 6, 2025 __ gene Ws

JEREMY D. PETERSON

10 UNITED STATES MAGISTRATE JUDGE

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