

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL GARCES,

Plaintiff,

v.

J. PICKETT, et al.,

Defendants.

No. 2:17-cv-0319 DAD AC P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983, has filed another motion for appointment of counsel and requests that his time to respond to defendants' cross-motion for summary judgment be extended until after counsel is appointed. ECF No. 208. Plaintiff's response is currently due by April 3, 2023. ECF No. 207.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

"When determining whether 'exceptional circumstances' exist, a court must consider 'the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.'" Palmer v. Valdez, 560 F.3d 965,

1 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
2 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
3 most prisoners, such as lack of legal education and limited law library access, do not establish
4 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

5 Plaintiff alleges that defendants are retaliating against him by starving him and
6 manipulating the psychiatrists to declare him incompetent so that his legal work can be seized.
7 ECF No. 208 at 1. He further asserts that his legal work has in fact been seized and requests a
8 ninety-day extension of time to file his opposition to the motion for summary judgment and
9 counsel to assist him in doing so. Id.

10 This is plaintiff's second motion requesting that his time to respond to defendants' motion
11 for summary judgment be extended until he is appointed counsel. The previous request was
12 granted in part, and plaintiff was afforded an extension of time to file his response while his
13 request for counsel was denied. ECF No. 207. In ruling on the previous motion, the undersigned
14 found, in pertinent part, that

15 With respect to plaintiff's separation from his legal paperwork, there
16 is no indication that an extension of time is insufficient to allow him
17 time to obtain access to his files. Should plaintiff continue to be
18 refused access to his files, he may file another motion addressing the
19 issue, and any such motion should be accompanied by
20 documentation showing plaintiff's attempts to gain access to his
21 paperwork and any responses received. Finally, plaintiff's claim that
22 he has been declared incompetent, though he appears to disagree with
23 this determination, does not, by itself, establish extraordinary
24 circumstances. If plaintiff chooses to file another motion for
25 appointment of counsel based upon his mental health conditions, he
26 should identify what conditions he suffers from, explain how his
27 conditions prevent him from proceeding without assistance, and
28 provide medical documentation supporting his claimed impairments.
For these reasons, plaintiff has not shown the existence of
extraordinary circumstances warranting the appointment of counsel.

24 Id. at 2 (footnote omitted).

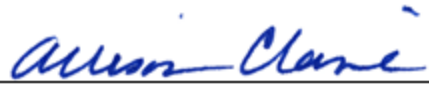
25 Although plaintiff once again alleges that he has been separated from his paperwork, he
26 has not provided any of the additional information or documentation identified by the court.¹

27 ¹ The court further notes that while plaintiff alleges that defendants are the ones responsible for
28 (continued)

1 With respect to the documentation plaintiff has provided, while it does confirm that he is
2 receiving mental health treatment, it also reflects that his activities of daily living are adequate
3 and that his “mental health is unlikely to decompensate while retained in segregated housing.”
4 ECF No. 208 at 2. For these reasons, plaintiff has failed to demonstrate the existence of
5 extraordinary circumstances that would warrant the appointment of counsel and the request for
6 counsel will be denied. However, in light of the representation that plaintiff is currently separated
7 from his paperwork, plaintiff will be granted a brief extension of time. Any further requests for
8 extension of time based on plaintiff’s inability to access his legal paperwork, or requesting
9 assistance with access to said paperwork, must be accompanied by the information and
10 documentation identified above.

11 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for appointment of
12 counsel and an extension of time (ECF No. 208) is GRANTED in part. Plaintiff shall have an
13 additional fourteen days, up to April 17, 2023, to file a response to defendants’ cross-motion for
14 summary judgment. The motion is otherwise DENIED.

15 DATED: March 20, 2023

16 
17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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27 his conditions, he also states that the conduct has been taking place at Kern Valley State Prison
28 (ECF No. 208 at 1), while defendants were alleged to have worked at High Desert State Prison
(ECF No. 1) and both defendants’ declarations, filed in support of their motion for summary
judgment, state that they are currently retired (ECF No. 204-3 at 1; ECF No. 204-4 at 1).