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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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PERCY LAVAE BACON,

Plaintiff,

v.

STEPHEN C. WEBSTER, et al.,

Defendants.

Case No. 2:05-cv-01267-JCM-GWF

**ORDER**

This matter is before the Court on Plaintiff’s Application for Leave to proceed In Forma Pauperis (ECF No. 60), filed on January 25, 2018. Also before the Court is Plaintiff’s Motion for Appointment of Counsel (ECF No. 61), filed on January 25, 2018.

**BACKGROUND**

Defendants filed their Petition for Removal on October 20, 2005. ECF No. 1. On January 26, 2006, the Court granted Defendants’ Motion to Dismiss and dismissed this case without prejudice. See ECF No. 9. On December 28, 2010, the Court denied Plaintiff’s Motion to Set Aside Judgment. ECF No. 23. On April 16, 2012, the Court denied Plaintiff’s Motion for Status Check and Motion to Reopen Case. ECF No. 46. On November 24, 2014, the Court denied Plaintiff’s Motion to Set Aside Judgment, Motion to Appoint Counsel, and Motion to Extend Copy Work Limit. ECF No. 53. On December 11, 2014, Plaintiff filed his notice of appeal of the Court’s November 24, 2014 Order. ECF No. 54. On January 13, 2015, the United States Court of Appeals for the Ninth Circuit dismissed the appeals. See ECF Nos. 55, 57. On October 13, 2017, Plaintiff filed his notice of appeal as to the Court’s November 24, 2014 Order denying Plaintiff’s Motion to Set Aside Judgment, Motion to Appoint Counsel, and Motion to Extend Copy Work Limit.

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1 **DISCUSSION**

2 Plaintiff requests permission to proceed in forma pauperis. To proceed in forma pauperis,  
3 an incarcerated or institutionalized plaintiff must submit an in forma pauperis application to the  
4 Court, accompanied by a financial certificate from the institution and a copy of the plaintiff's  
5 prison account statement showing the current balance of the account. LSR 1-1, 1-2. Plaintiff  
6 failed to submit a financial certificate and copy of his prison account statement. The Court,  
7 therefore, denies his application to proceed in forma pauperis.

8 Should Plaintiff decide to reapply for in forma pauperis status, he is notified that he will  
9 still be required to pay a total amount of \$400.00, which will be deducted from his prison account  
10 in installments. Pursuant to the Prison Litigation Reform Act of 1995, the District Court is required  
11 to assess a fee where a prisoner is granted leave to proceed in forma pauperis in a civil action and  
12 the prison officials are required to collect and remit the money to the Court. See 28 U.S.C. §  
13 1915(b)(1)-(2). If the plaintiff does not have \$400.00, the plaintiff will be required to pay either  
14 20% of the average monthly balance or 20% of the average monthly deposits, whichever is greater.  
15 Furthermore, the plaintiff will be required to pay installments of 20% of the preceding month's  
16 deposits to the account in months that the account balance exceeds \$10.00.

17 Plaintiff further requests appointment of counsel. There is no constitutional right to the  
18 appointment of counsel in civil cases. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269  
19 (9th Cir. 1982). In determining whether counsel should be appointed, the court has discretion to  
20 consider three relevant factors: (1) the plaintiff's financial resources; (2) the efforts made by the  
21 plaintiff to secure counsel; (3) the meritoriousness of the plaintiff's claim; and (4) the ability of  
22 the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.  
23 *Id.* Plaintiff has not presented sufficient evidence to persuade this Court to appoint counsel to  
24 represent him. Accordingly,


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**IT IS HEREBY ORDERED** that Plaintiff's Application for Leave to proceed In Forma Pauperis (ECF No. 60) is **denied**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (ECF No. 61) is **denied**.

Dated this 27th day of August, 2018.

  
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GEORGE FOLEY, JR.  
UNITED STATES MAGISTRATE JUDGE