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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT H. SMITH,

9 Plaintiff,

10 v.

11 RYAN W. PHILLIPS, *et al.*,

12 Defendants.

Case No. C17-1457-TSZ-MAT

ORDER DENYING PLAINTIFF'S  
APPLICATION FOR COURT-  
APPOINTED COUNSEL

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14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the  
15 Court at the present time on plaintiff's application for court-appointed counsel. The Court, having  
16 reviewed plaintiff's application, and the balance of the record, hereby finds and ORDERS as  
17 follows:

18 (1) Plaintiff's application for court-appointed counsel (Dkt. 1-2) is DENIED. There is  
19 no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the Court,  
20 under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma*  
21 *pauperis*, the Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789  
22 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe*  
23 *v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an


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1 evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate  
2 his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

3 While the Court has determined that plaintiff's complaint is deficient and must therefore  
4 be amended if he wishes to proceed with this action, plaintiff gives no indication that he lacks the  
5 ability to articulate his claims *pro se*. As for plaintiff's likelihood of success on the merits of his  
6 claims, the record is not yet sufficiently developed for this Court to make such a determination.  
7 Based on the information available to the Court at this time, this Court must conclude that plaintiff  
8 has not demonstrated that his case involves exceptional circumstances which warrant the  
9 appointment of counsel.

10 (2) The Clerk is directed to send copies of this Order to plaintiff and to the Honorable  
11 Thomas S. Zilly.

12 DATED this 6th day of October, 2017.

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15 Mary Alice Theiler  
16 United States Magistrate Judge  
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