



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

4 Plaintiff offers little explanation in his application as to why he believes appointment of  
5 counsel is appropriate in this matter, noting only that he has contacted several attorneys to help  
6 him in this case, apparently without success. (*See* Dkt. 16 at 2.) There is simply nothing in  
7 plaintiff's application for counsel, or in his complaint, which demonstrates that this case involves  
8 exceptional circumstances warranting the appointment of counsel. In a more recent submission,  
9 which plaintiff identifies as a declaration, plaintiff reiterates his request for counsel and suggests  
10 that he is being denied access to evidence which would allow him to counter defendants'  
11 assertion, made in their pending motion to dismiss, that plaintiff did not exhaust his  
12 administrative remedies. (*See* Dkt. 17.)

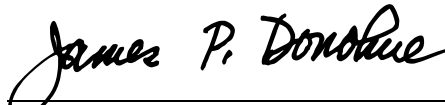
13 To the extent plaintiff intends to argue that counsel is necessary to assist him in  
14 countering defendants' exhaustion argument, he has still not established that appointment of  
15 counsel is warranted. Plaintiff has not shown that the task of obtaining evidence to demonstrate  
16 proper exhaustion, assuming it exists, is beyond his capabilities, or that such evidence is being  
17 withheld. In fact, the record shows that plaintiff made a public records request seeking  
18 documents from the Whatcom County Jail, and that Jail Chief Wendy Jones responded to that  
19 request, advising plaintiff that documents in his file were available to him, albeit for a small fee.

1 (See Dkt. 17 at 4.) The mere fact that plaintiff may be required to pay a fee in order to obtain  
2 necessary documentation is not sufficient to establish an entitlement to counsel.<sup>1</sup>

3 (2) Defendants have filed a motion to dismiss which was noted on the Court's  
4 calendar for consideration on June 15, 2018. In light of the Court's ruling on plaintiff's motion  
5 for appointment of counsel, the Court deems it appropriate to grant plaintiff some additional time  
6 to file his response to defendants' motion to dismiss. Accordingly, plaintiff is directed to file and  
7 serve any response to defendants' motion to dismiss not later than **August 6, 2018**. Defendants'  
8 motion to dismiss (Dkt. 13) is RE-NOTED on the Court's calendar for consideration on **August**  
9 **10, 2018**.

10 (3) The Clerk is directed to send copies of this Order to plaintiff, to counsel for  
11 defendants, and to the Honorable James L. Robart.

12 DATED this 9th day of July, 2018.

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15 JAMES P. DONOHUE  
16 United States Magistrate Judge  
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22 <sup>1</sup> It is noteworthy that plaintiff acknowledged in his complaint that he failed to complete the grievance  
23 process. (See Dkt. 7 at 2.) If he has now changed his position on that issue, it is incumbent upon him to support his  
new position with actual evidence.