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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DENISE BARNES and PETER BARNES,

Plaintiffs,

v.

CITY OF MILTON,

Defendant.

Case No. C09-5034 FDB

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Plaintiffs move for appointment of counsel to prosecute this civil rights action. Generally, there is no constitutional right to counsel in a civil case. United States v. 30.64 Acres of Land, 795 F.2d 796, 801 (9th Cir. 1986). However, pursuant to 28 U.S.C. § 1915(d), the court has discretion to request volunteer counsel for indigent plaintiffs in exceptional circumstances. Id.; Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990). While the court may request volunteer counsel in exceptional cases, it has no power to make a mandatory appointment. Mallard v. U.S. Dist. Court of Iowa, 490 U.S. 296, 301-08 (1989). In order to determine whether exceptional circumstances exist, the court evaluates the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his or her claim pro se in light of the complexity of the legal

ORDER - 1

1 issues involved. Wood, at 1335-36; Richards v. Harper, 864 F.2d 85, 87 (9th Cir. 1988).


2 Initially, the Plaintiffs have not established *in forma pauperis* status. Moreover, Plaintiffs
3 have not demonstrated a likelihood of success on the merits or exceptional circumstances which
4 warrant appointment of counsel. Accordingly, Plaintiffs' motion for appointment of counsel will be
5 denied.

6 ACCORDINGLY,

7 IT IS HEREBY ORDERED:

8 Plaintiffs' motion for appointment of counsel [Dkt. #14] is **DENIED**.

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10 DATED this 16th day of September, 2009.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE