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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WAYNE A. MURPHY,  
  
Plaintiff,  
  
v.  
  
PIERCE COUNTY JAIL, et al.,  
  
Defendants.

CASE NO. C11-5448BHS  
  
ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 16) and Plaintiff Wayne A. Murphy’s (“Murphy”) objections to the R&R (Dkt. 18), which also contained a motion to appoint counsel. The Court has considered the R&R, Murphy’s objections and motion, and the remaining record, and hereby adopts the R&R and denies the motion to appoint counsel for the reasons stated herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On June 9, 2011, Murphy filed his civil rights complaint alleging violations by Defendants of 42 U.S.C. § 1983. Dkt. 7. On October 19, 2011, Judge Strombom issued the R&R recommending that Murphy’s complaint be dismissed without prejudice as

1 frivolous and that the dismissal count as a strike under 28 U.S.C. § 1915(g). Dkt. 16 at 5.  
2 On November 7, 2011, Murphy filed a response to the R&R. Dkt. 18. In his response,  
3 Murphy does not object to the R&R, but seeks appointment of counsel, an order requiring  
4 Defendants to produce documents, and an extension of time to review the documents. *Id.*

## 5 **II. DISCUSSION**

### 6 **A. Motion to Appoint Counsel**

7 There is no right to have counsel appointed in cases brought under 42 U.S.C.  
8 § 1983. Although a court, under 28 U.S.C. § 1915(e), can request counsel to represent a  
9 party proceeding in forma pauperis, the court may do so only in exceptional  
10 circumstances. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). A finding of  
11 exceptional circumstances requires an evaluation of both the likelihood of success on the  
12 merits and the ability of the plaintiff to articulate his claims pro se in light of the  
13 complexity of the legal issues involved. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331  
14 (9th Cir. 1986).

15 Here, Murphy fails to demonstrate exceptional circumstances that warrant  
16 appointment of counsel, and has demonstrated an adequate ability to articulate his claims  
17 pro se. In addition, Murphy has not demonstrated a likelihood of success on the merits.  
18 Accordingly, his motion to appoint counsel is denied.

### 19 **B. Response to the R&R**

20 After allowing Murphy multiple amendments to his complaint, Judge Strombom  
21 found that Murphy had failed to allege a policy or practice by Defendants that would  
22 entitle him to bring claims against them under § 1983. Dkt. 16. In his response to the

1 R&R, Murphy has failed to allege what documents he is seeking, why he is entitled to  
2 further documents, or how the documentation he requests would remedy his complaint.  
3 Dkt. 18. Further, he has failed to make any specific objections to Judge Strombom's  
4 findings. *Id.* In seeking an order for production of documents and an extension of time  
5 to review such documents, Murphy has failed to make an effective objection to the R&R.  
6 Accordingly, the Court will adopt the R&R.

### 7 **III. ORDER**

8 The Court having considered the R&R, Murphy's response, and the remaining  
9 record, does hereby find and order as follows:

- 10 (1) Murphy's motion to appoint counsel is **DENIED**;  
11 (2) The R&R is **ADOPTED**; and  
12 (3) This action is **DISMISSED without prejudice** and the dismissal will count  
13 as a **strike** under 28 U.S.C. § 1915(g).

14 Dated this 28<sup>th</sup> day of December, 2011.

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17 **BENJAMIN H. SETTLE**  
18 United States District Judge  
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